SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 486.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR; 'CATO SELLS, COMMISSIONER OF INDIAN AFFAIRS; AND JOHN BURKE, TREASURER OF THE UNITED STATES, APPELLANTS,

vs.

JOHN G. MORRISON, JR., FOR AND ON BEHALF OF HIMSELF AND ALL OTHER MEMBERS OF THE CHIPPEWA TRIBE OF INDIANS IN MINNESOTA SIMILARLY SITUATED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Transcript of record from the Supreme Court of the District of Columbia	1	1
Caption	1	1
Bill of complaint	1	1
Return of Lane and Sells to rule to show cause	6	6
Motion to dismiss	9	9
Return and answer of John Burke, Treasurer of the United States	10	10
Decree dismissing plaintiff's bill	10	10
Amendments to bill	11	11
Memorandum: Appeal noted and granted; appeal bond approved and filed	12	12
Appellants' designation of record	12	12
Assignments of error	12	12
Opinion of court	13	13
Clerk's certificate	14	14
Entry of argument and submission	15	14
Opinion, Robb, J	16	15
Decree	20	17
Motion for appeal	21	18
Assignment of errors	23	19
Order staying mandate and granting appeal	26	20
Citation and service	27	21
Clerk's certificate	28	21

47104—16——1

1 Court of Appeals of the District of Columbia.

JOHN G. MORRISON, JR., ETC., APPELLANT,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, et al. } No. 2908.

Supreme Court of the District of Columbia.

JOHN G. MORRISON, JR., FOR AND ON BEHALF OF himself and all other members of the Chippewa Tribe of Indians in Minnesota, similarly situated, plaintiffs,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR; Cato Sells, Commissioner of Indian Affairs, and John Burke, Treasurer of the United States, defendants. } In Equity. No. 33761.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Bill.

Filed September 17, 1915.

In the Supreme Court of the District of Columbia.

THE CHIPPEWA INDIANS OF MINNESOTA, BY J. G. Morrison, president of their general counsel, plaintiff,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR; Cato Sells, Commissioner of Indian Affairs, and John Burke, Treasurer of the United States, defendants. } Equity. No. 33761.

The plaintiff for cause of action states:

2 1. That plaintiff, the Chippewa Indians of Minnesota, is a political organization, organized and continued in existence by all of the Chippewa Indians of Minnesota for their mutual advantage and protection; that said organization, through its duly elected officers, transacts all tribal business for the said Chippewa Indians of Minnesota, and has been repeatedly recognized by the Department of the Interior and the Congress of the United States;

that J. G. Morrison, jr., is a duly enrolled and recognized member of the Chippewa Tribe of Indians of Minnesota and president of their general counsel; that said general counsel on the 12th day of June, 1915, duly adopted a resolution authorizing its executive committee to take such appropriate action, as in the judgment of the members thereof was necessary to properly protect the rights of the Chippewas of Minnesota in connection with the disbursement of any portion of their funds in the Treasury of the United States during the fiscal year ending June 30th, 1916; that thereafter, and on August 31st, 1915, the executive committee met and authorized J. G. Morrison, jr., president of the general counsel and of the executive committee, to institute a suit on behalf of the Chippewa Indians of Minnesota, to prevent the disbursement of $150,000 of their trust funds on deposit in the Treasury of the United States, by the officers of the Department of the Interior, during the fiscal year ending June 30th, 1916; that this suit is brought in the name of the Chippewa Indians, by the president of their general counsel, under the authority above stated, for and on behalf of himself and all other members of the Chippewa Indians of Minnesota.

2. That the defendant Franklin K. Lane is a citizen of the United States, resident of the State of California, commorant of the District of Columbia, and Secretary of the Interior, and is sued herein in his official capacity; that the defendant Cato Sells is a citizen of the United States, resident of the State of Texas, commorant of the District of Columbia, and Commissioner of Indian Affairs, and is sued herein in his official capacity; that the defendant John Burke is a citizen of the United States, resident of the State of North Dakota, commorant of the District of Columbia, and is sued herein in his official capacity.

3. That by an act approved January 14, 1889 (25 Stats., 642), the President of the United States was authorized to appoint a commission to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment of all their title to all their lands in Minnesota, not considered requisite and necessary for allotment purposes, more particularly set out in said act; said cessions to be complete when assented to by the Indians and approved by the President of the United States, as provided for in said act. The said act further provided for the sale and disposal of the ceded lands and the timber thereon and by section 7 thereof for the deposit of the net proceeds derived therefrom in the Treasury of the United States to the credit of the Chippewa Indians of the State of Minnesota as a permanent fund, which
3 should draw interest at the rate of 5 per cent per annum, payable annually for the period of fifty years, said interest and permanent fund to be expended for the benefit of the plaintiff Indians in manner following:

"One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter provided, be annually paid in cash in equal shares to the heads of families and guardians of

orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of said fifty years the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares: Provided, That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum not exceeding five per centum thereof.

Plaintiff represents that the various bands of the Chippewa Indians of Minnesota, then and now members of the plaintiff organization, consented to the provisions of said act believing that the terms and provisions thereof would be carried out in good faith, and that the terms and provisions of section 7 of said act hereinbefore stated have never been changed by any subsequent law or agreement and are to-day in full force and effect.

4. Plaintiff represents that by an act approved August 1, 1914 (Public No. 160, 63d Congress), being an "act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and fifteen," it was provided:

"The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of $205,000, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section seven of the act of January fourteen, eighteen hundred and eighty-nine, entitled 'An act for the relief and civilization of the Chippewa Indians in the State of Minnesota,' and to use the same for the purpose of promoting civilization and self-support among the said Indians in manner and for purposes provided for in said act: Provided, That not to exceed $40,000 of this amount may be used in the purchase of lands for homeless non-removal Mille Lacs Indians, to whom allotments have not heretofore been made, to be immediately available and to remain available until expended, said lands to be held in trust and may be allotted to said Indians, in the discretion of the Secretary of the Interior, subject to the provisions of the act of February eighth, eighteen hundred and eighty-seven (Twenty-four Statutes at Large, page three hundred and eighty-eight, as amended): Provided further, That not to exceed $5,000 of the amount herein appropriated may be expended in the removal of Chippewa Indian bodies from the burial grounds in the vicinity of Wisconsin Point, Wisconsin, and their reinterment in an established cemetery in the city of

Superior; said amount to cover markers for each grave or one monument, as may be found most suitable; and for the removal and suitable burial and marking of the graves of Indian bodies at Mille Lacs, Gull Lake, and Sandy Lake, Minnesota."

Plaintiff further represents that said appropriation was made for three special purposes therein expressly stated and that the expenditure of said money was expressly limited to the fiscal year ending June 30, 1915, except the item of $40,000.

5. Plaintiff represents that the annual appropriation bill for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1916, failed of passage by the Congress of the United States, and that in lieu thereof a joint resolution was passed by Congress and by the President approved March 4, 1915, which provided as follows:

Public Resolution No. 74—63d Congress. H. J. Res. 441.

Joint resolution making appropriations for current contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and sixteen.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all appropriations for the current and contingent expenses of the Bureau of Indian Affairs and for fulfilling treaty stipulations with various Indian tribes which shall remain unprovided for on June thirtieth, nineteen hundred and fifteen, are continued and made available for and during the fiscal year nineteen hundred and sixteen to the same extent, in detail, and under the same conditions, restrictions, and limitations for the fiscal year nineteen hundred and sixteen as the same were provided for on account of the fiscal year nineteen hundred and fifteen in the Indian appropriation act for that fiscal year. For all of such purposes a sufficient sum is appropriate, out of any money in the Treasury not otherwise appropriated, or out of funds to the credit of Indians as the same were respectively provided in the Indian appropriation act for the fiscal year nineteen hundred and fifteen: Provided, That the appropriations from the Treasury of the United States or from Indian funds shall not exceed in the aggregate the amounts of such appropriations for the fiscal year nineteen hundred and fifteen: Provided further, That this joint resolution shall not be construed as providing for or authorizing the duplication of any special payment or for the execution of any purpose provided for in said appropriation act that was intended to be paid only once or done solely on account of the fiscal year nineteen hundred and fifteen: Provided further, That appropriations continued hereunder shall be available for the maintenance, repair, and operation of motor propelled and

horse-drawn passenger carrying vehicles in the same manner as appropriations were available for those purposes during the fiscal year nineteen hundred and fifteen.

Approved, March 4, 1915.

6. Plaintiff represents that no part of the $205,000 appropriated by the act of August 1, 1914, was for the "Expenses of the Bureau of Indian Affairs" or "for fulfilling treaty stipulations" with the Chippewa Indians of Minnesota; that said appropriation of $205,000 contained in the act of August 1, 1914, was a special appropriation for specific purposes, the expenditure thereof except the $40,000 item, not involved in this suit, being limited exclusively to the fiscal year ending June 30, 1915, and was not intended as a regular annual appropriation, but was intended to be made only once, and was made solely on account of the fiscal year ending June 30, 1915, and that said joint resolution in express language excluded all such appropriations contained in the act of August 1, 1914, from being reexpended during the fiscal year ending June 30, 1916, but notwithstanding the plain language of the statute, plaintiff is informed and believes that the Comptroller of the Treasury has advised the Commissioner of Indian Affairs and the Secretary of the Interior that $160,000 of the $205,000, appropriated by the act of August 1, 1914, was reappropriated by the joint resolution of March 4, 1915, and that the defendants are authorized to expend said amount for the purposes provided for in said act approved January 14, 1889, and plaintiff is further advised that the defendants, the Secretary of the Interior and the Commissioner of Indian Affairs are now preparing, contrary to law, to expend said sum of $160,000 of the trust funds of the plaintiff Indians, and that they will, unless restrained by order of this court, draw warrants or checks on the trust funds of the plaintiff Indians now on deposit in the Treasury of the United States, in the aggregate amount of $160,000, and the Treasurer of the United States will without authority of law, unless enjoined by order of this court, cash said checks or warrants and illegally disburse $160,000 of the funds belonging to plaintiffs, to their great, lasting, and irreparable injury.

7. That plaintiff is without a plain, adequate and complete remedy at law.

Wherefore, plaintiff prays:

(a) That writ of subpœna issue from this honorable court directed against the defendants, Franklin K. Lane, Secretary of the Interior; Cato Sells, Commissioner of Indian Affairs; and John Burke, Treasurer of the United States, commanding them and each of them to appear on a day certain to be named therein and answer fully, but not under oath, answer under oath being expressly waived, the exigencies of this bill.

6 (b) That a rule issue directed to the defendants requiring them and each of them to show cause on a day certain, to be therein named, if any they may have, why they should not be enjoined and restrained from drawing any check or warrant against the funds

now standing to the credit of the Chippewa Indians of Minnesota in the Treasury of the United States for the one hundred and sixty thousand dollars claimed by the defendants, the Secretary of the Interior, and the Commissioner of Indian Affairs, to have been reappropriated by the said joint resolution of March 4, 1915, and enjoining and restraining the Treasurer of the United States from paying any such check or warrant if drawn out of said funds under his control; and that upon the return to said rule plaintiff be granted a temporary injunction restraining and enjoining the defendants from drawing or cashing any such warrant or check.

(c) That upon final hearing said temporary injunction be made perpetual.

(d) Plaintiff also prays for such other and further relief as to the court may seem just and proper and the exigencies of the case may require.

THE CHIPPEWA INDIANS OF MINNESOTA,
By J. G. MORRISON, Jr.,
President of Their General Council.

WEBSTER BALLINGER,
Counsel for Plaintiffs.

STATE OF MINNESOTA,
County of Beltrami, ss:

John G. Morrison, jr., being by me first duly sworn according to law deposed and said: That he has read the above and foregoing petition by him subscribed and knows the contents thereof; that the matters and things therein stated of his own personal knowledge he knows to be true; and that those things stated upon information and belief he believes to be true.

JOHN G. MORRISON, Jr.,
President of the General Council of the Chippewa Indians of Minnesota.

Subscribed and sworn to before me this 11 day of September, A. D. 1915.

[SEAL.] OMAR R. GRAVELLE,
Notary Public, State of Minnesota.

My commission expires Jan. 21, 1922.

Return of Lane and Sells to the rule to show cause.

Filed October 1, 1915.

* * * * * * * *

Come now Franklin K. Lane, Secretary of the Interior, and Cato Sells, Commissioner of Indian Affairs, by their attorneys, and
7 in answer to the rule to show cause why injunction should not issue as prayed in the plaintiff's bill of complaint filed in the above-entitled cause, say:

That for the fiscal years from 1891 to 1911, inclusive, appropriations for the relief and civilization of the Chippewa Indians of Minnesota were annually made by the Congress of the United States, such appropriations being made reimbursable out of principal funds deposited in the Treasury of the United States to the credit of said Indians; that thereafter, and since the year 1911, Congress by legislation annually has authorized such expenditures, theretofore made as aforesaid, to be made directly from said tribal funds; that in the Indian appropriation bill for 1916, officially known as "H. R. 20150, 63d Congress, 3d session," an authorization similar to that contained in like appropriation bills for the years 1912 to 1915, inclusive, was inserted at page 27 of said bill; but while said bill passed both branches of Congress, it failed to become a law; that in consequence thereof, Congress by joint resolution dated March 4, 1915, continued and made available for and during the fiscal year 1916 the same appropriation authorized by law for the current and contingent expenses of the Indians during the fiscal year of 1915; that said joint resolution in part provides as follows:

For all of such purposes a sufficient sum is appropriated, out of any money in the Treasury not otherwise appropriated, or out of funds to the credit of Indians as the same were respectively provided in the Indian appropriation act for the fiscal year nineteen hundred and fifteen: Provided, That the appropriations from the Treasurer of the United States or from Indian funds shall not exceed in the aggregate the amounts of such appropriations for the fiscal year nineteen hundred and fifteen: * * *

They further say that the appropriation and authorizations heretofore described have been relied upon annually for the expenses of administration at the several Chippewa Indian agencies and for the direct benefit of said Indians, the amount therefor that was spent out of the funds of the Chippewa Indians of Minnesota for the fiscal year ending June 30, 1915, having been $152,312.31.

Further, they say, that subsequent to the passage of the joint resolution of March 4, 1915, to wit, March 13, 1915, the Secretary of the Interior, acting through his assistant secretary, addressed a communication to the Comptroller of the Treasury inviting his attention to said joint resolution and stating and asking among other things:

I am also in doubt as to the total amount the Secretary of the Interior is authorized to withdraw from the Treasury from the principal funds of the Chippewa Indians of Minnesota under said *John* resolution for the fiscal year 1916.

Are the items of $1,000.00 annually authorized to be advanced to the executive committee of the White Earth Band of Chippewa Indians for expenses of a celebration, the $40,000.00 for purchase of lands for nonremoval—Mille Lac Indians, and the $5,000.00 for the removal of Chippewa bodies from *buried* grounds in the
8 vicinity of Wisconsin Point, Wisconsin, similarly authorized for 1916?

In response thereto, the said comptroller, on March 23, 1915, ruled, and so advised defendants, that the $5,000 appropriation mentioned was for work to be completed in the fiscal year 1915 and was therefore not available during the year 1916; that the said sum of $40,000 was available until expended and that therefore any part of such fund not withdrawn prior to July 1, 1916, might be withdrawn thereafter under authority, not of the joint resolution aforesaid, but of the Indian appropriation act for 1915; and that by reason of said joint resolution, the defendants were authorized to withdraw and expend from the principal fund of said Chippewa Indians no more than $160,000.

Thereafter, and on July 22, 1915, the Secretary of the Interior, acting through his first assistant secretary, transmitting in that behalf the petition of the parties styled as plaintiffs in this action, requested the Comptroller of the Treasury to reconsider his decision of March 23, 1913, aforesaid, not because of any doubt as to correctness of the conclusions therein reached, but in order to satisfy the Chippewa Indians and their attorney. Whereupon, after full consideration of the premises and the arguments of the attorney for said general council of Chippewa Indians of Minnesota, the Comptroller of the Treasurer on July 31, 1915, adhered to his decision of March 23, 1913, aforesaid.

The defendants further represent that subsequent to the decision of the comptroller aforesaid, both prior to and after July 31, 1915, and relying upon the authority thereof, the Secretary of the Interior and the Commissioner of Indian Affairs have entered into contracts and have incurred obligations payable out of said "Chippewa in Minnesota fund" for the fiscal year 1916, to an amount aggregating $159,365.60, of which amount $32,649.41 have already been actually paid out and advanced by the Treasury to to the various disbursing agents for authorized expenditures.

They further say that there are no other funds available for the payment of the necessary expenses paid and contracted as above set forth and that unless said sum of $160,000 is available as decided by said comptroller, all the Chippewa agencies, with the various activities that have heretofore and are now being conducted for the benefit of said Indians must be abandoned; that said expenses embrace subsistence supplies, clothing, forage, fuel, educational supplies, medical supplies, etc.

They further submit that the matters sought in the plaintiff's bill to be controlled, present questions exclusively within the jurisdiction of the comptroller to decide, and that his decision, having herein been duly rendered, is not reviewable by any court, in this or other manner of proceeding.

They also submit that the bill fails to show any capacity or legal entity in the Chippewa Indians of Minnesota to sue or to be sued, as such, or to begin and maintain as such this or any other suit; or that the so styled "general council" or J. G. Morrison, "president"
9 of said "general council," has any authority to begin and maintain this or any suit in the name of the Chippewa Indians.

Wherefore, having made full and complete return to the rule to show cause herein issued they pray that the same may be discharged and that they be permitted to go hence without day.

FRANKLIN K. LANE,
Secretary of the Interior.
CATO SELLS,
Commissioner of Indian Affairs.

By their attorneys:
PRESTON C. WEST,
Solicitor for the Department of the Interior.
C. EDWARD WRIGHT,
Assistant Attorney for the Department of the Interior.

DISTRICT OF COLUMBIA, *ss:*

I, C. Edward Wright, assistant attorney for the Department of the Interior, on oath depose and say that I am attorney for the defendants in the above-entitled cause; that I am acquainted with the facts set forth in the foregoing return to the rule to show cause, and that the same are true.

C. EDWARD WRIGHT.

Subscribed and sworn to this 30th day of September, 1915, before me:

[SEAL.]

W. BERTRAND ACKER,
Notary Public in and for the District of Columbia.

Motion to dismiss.

Filed October 1, 1915.

* * * * * * *

Come now the defendants, Franklin K. Lane, Secretary of the Interior, and Cato Sells, Commissioner of Indian Affairs, by their attorneys, and move to dismiss the bill herein filed; and for cause show that the plaintiff has not in or by his bill exhibited a cause for relief in equity, in that it appears:

1. That the matters sought to be controlled present questions exclusively within the jurisdiction of the comptroller to decide; that, as appears on the face of the bill, his jurisdiction has been invoked and he has decided that it is lawful that the defendants expend the sum of money in the manner sought by this bill to be enjoined; and having thus decided, the decision of the comptroller is not reviewable by any court in this or any other proceeding.

2. That the bill fails to show any capacity or legal entity in the Chippewa Indians of Minnesota to sue or be sued as such, or to begin and maintain as such this or any other suit.

3. That the bill fails to show that the so-styled "general council" or J. G. Morrison, president of said general council, has any authority to begin and maintain this or any suit in the name of the Chippewa Indians.

4. That as appears on the face of the bill, the matters sought to be enjoined do not involve any irreparable injury or other grounds for interference by a court of equity in that the moneys sought to be expended are for the use and benefit of the Chippewa Indians of Minnesota.

Wherefore, they pray that the bill be dismissed with their reasonable costs and that they may be permitted to go hence without *day.*

FRANKLIN K. LANE,
Secretary of the Interior.
CATO SELLS,
Commissioner of Indian Affairs.

By their attorneys:

PRESTON C. WEST,
Solicitor for the Department of the Interior.
C. EDWARD WRIGHT,
Assistant Attorney for the Department of the Interior.

Return and answer of John Burke, Treasurer of the United States, to the rule to show cause.

Filed October 8, 1915.

* * * * * * *

The defendant, John Burke, Treasurer of the United States, by John E. Lasky, Esq., attorney of the United States in and for the District of Columbia, elects to stand upon the answer of the defendant, Franklin K. Lane, Secretary of the Interior, to the rule to show show cause herein, and claims the benefit thereof.

JOHN E. LASKY,
United States Attorney, D. C.

Decree dismissing plaintiff's bill.

Filed October 22, 1915.

* * * * * * *

This cause came on to be heard on the defendants' motion to dismiss the bill herein filed and upon the rule to show cause why a temporary injunction should not issue, and was argued by counsels; and thereupon, upon consideration thereof, it is this 18th day of October, 1915,

Adjudged, ordered, and decreed that the rule herein issued
11 be, and the same is hereby, discharged, that the plaintiffs be granted leave to amend the bill so that it will clearly appear therefrom that the action is brought by J. G. Morrison, jr., as

plaintiff, for and on behalf of himself and all other members of the Chippewa Tribe of Indians in Minnesota, and the bill as so amended may be filed nunc pro tunc as of the date of October 16, 1915, and the same is hereby dismissed, with costs to the defendants to be taxed by the clerk.

By the court:

THOS. H. ANDERSON, *Justice.*

Amendments to bill.

Filed November 1, 1915.

* * * * * * *

Pursuant to leave first had and obtained plaintiffs ask leave to amend their bill of complaint, without filing a new bill, in the following respects:

Strike out these words appearing in the caption:

"The Chippewa Indians of Minnesota, by John G. Morrison, Jr., President of their General Council, Plaintiffs,"

and in lieu thereof insert the following:

"John G. Morrison, Jr., for and on behalf of himself and all other Members of the Chippewa Tribe of Indians in Minnesota similarly situated, Plaintiffs."

Strike out the first paragraph of the bill and in lieu thereof insert the following:

"That plaintiff, John G. Morrison, Jr., is a citizen of the United States and a duly enrolled and recognized member of the Chippewa Tribe of Indians in Minnesota and resides at Red Lake, Minnesota, and brings this suit in his own right as well as for and on behalf of all other members of the Chippewa Tribe of Indians in Minnesota similarly situated."

The signature following the prayers of the bill is amended in the following respects:

Strike out the words:

"THE CHIPPEWA INDIANS OF MINNESOTA,"
"By ""President of the General Council."

so that the signature to the petition will stand as the signature of "John G. Morrison, Jr."

After the name "John G. Morrison, Jr.," appearing in the affidavit, strike out the words following, to wit:

"President of the General Council of the Chippewa Indians of Minnesota."

WEBSTER BALLINGER,
Attorney for Plaintiffs.

12 Approved by the court:
THOS. H. ANDERSON,
Associate Justice.

Memorandum.

November 6, 1916, appeal noted and granted. Appeal bond approved and filed.

Appellants' designation of record.

Filed November 12, 1915.

* * * * * * *

The clerk of said court will please transcribe and certify as the record on appeal in the above-entitled cause the following:

1. The original bill of complaint.
2. Return of Defendants Lane and Sells to the rule to show cause.
3. Motion of Defendants Lane and Sells to dismiss.
4. Notation that Defendant John Burke, Treasurer of the United States, adopted the answer of Defendants Lane and Sells as his answer, and joined in their motion to dismiss.
5. The opinion of the court.
6. Decree dismissing plaintiff's bill.
7. Amendments to bill allowed and filed.
8. Memorandum of appeal noted in open court and appeal bond approved and filed.
9. This designation of the record.

WEBSTER BALLINGER,
Attorney for Appellants.

Service of copy of the above and foregoing designation of parts of the record accepted this 10th day of November, A. D. 1915.

C. EDWARD WRIGHT,
Attorney for Defendants.

Assignments of error.

Filed November 15, 1915.

* * * * * * *

1. The court erred in holding that $160,000. 00 of the amount which the Secretary of the Interior was authorized by the act of August 1, 1914, to withdraw from the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section 7 of the act of January 14, 1889, was reappropriated by the joint resolution of March 4, 1915, and its expenditure authorized during the fiscal year ending June 30, 1916.

13 2. The court erred in dismissing plaintiffs' bill.

3. The court erred in denying plaintiffs the relief asked.

WEBSTER BALLINGER,
Attorney for Plaintiffs.

Service of above assignment of error accepted this 15th day of November, 1915.

PRESTON C. WEST,
Attorney for Defendant.

Opinion.

Filed December 9, 1915.

* * * * * * *

The bill in this case seeks to enjoin the Secretary of the Interior, the Commissioner of Indian Affairs, and the Treasurer of the United States from expending for the fiscal year 1916 from the principal fund of Chippewa Indians in Minnesota the sum of $160,000 to be used for the purpose of promoting civilization and self-support among said Indians. The contention of plaintiff is that, although such an appropriation was made for the fiscal year 1915 (38 Stat., 582, 590–591), the act of Congress approved March 4, 1915, dealing with the fiscal year 1916, must be given a strict construction, and that, under a strict technical construction, the promotion of civilization and self-support among these Indians is neither a current or a contingent expense of the Bureau of Indian Affairs nor a fulfillment of treaty stipulations, so that, it is argued, the provision in the act of March 4, 1915—

"all appropriations for the current and contingent expenses of the Bureau of Indian Affairs and for fulfilling treaty stipulations with various Indian tribes which shall remain unprovided for on June thirtieth, nineteen hundred and fifteen, are continued and made available for and during the fiscal year nineteen hundred and sixteen to the same extent, in detail"—

should not be construed as renewing the appropriation of $160,000 from the principal fund of Chippewa Indians in Minnesota for the purpose of promoting civilization and self-support among those Indians as contained in the preceding act, as well as in the acts passed for the fiscal years 1912, 1913, and 1914.

This case is before the court upon rule to show cause and also upon motions to dismiss the bill. In the opinion of the court, the act in question is correctly interpreted by the Comptroller of the Treasury as follows:

"This joint resolution is remedial in that it was enacted to relieve an emergency situation arising from the failure of the regular Indian appropriation bill to become a law. Therefore it must be given a liberal construction; that is to say, such a construction as will give the full measure of relief intended by Congress.

"While under a strict technical construction it might be
14 said that the promotion of civilization and self-support among these Indians is neither a current or contingent expense of the Bureau of Indian Affairs nor a fulfillment of treaty stipulations, I do not think it was the intent or purpose of the resolution to so limit the appropriations made thereunder. The title of the resolution defines its scope as equally as broad as that of the regular annual appropriation act. And I think it was the intention of Congress to provide by this joint resolution for the continuation during

the fiscal year 1916 of all operations of the Bureau of Indian Affairs that were provided for in the Indian appropriation act for the fiscal year 1915, except such as by their nature were clearly intended to be completed during said fiscal year. The promotion of civilization and self-support is necessarily a continuing operation."

In this view of the court, it is not necessary to determine the further questions (1) whether the comptroller's decision is final and not reviewable, or (2) whether the plaintiff is a proper party to institute this suit.

The rule to show cause is discharged, and the motions to dismiss the bill sustained, upon the ground stated.

THOS. H. ANDERSON, *Justice.*

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 24, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 33761, in equity, wherein John G. Morrison, jr., &c., are plaintiffs and Franklin K. Lane, Secretary of the Interior, et al., are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 10th day of December, 1915.

(Seal Supreme Court of the District of Columbia.)

JOHN R. YOUNG, *Clerk,*

(Endorsed on cover:) District of Columbia Supreme Court. No. 2908. John G. Morrison, jr., etc., appellant, vs. Franklin K. Lane, Secretary of the Interior, et al. Court of Appeals, District of Columbia. Filed Dec. 20, 1915. Henry W. Hodges, Clerk.

15 Wednesday, February 23d, A. D. 1916.

JOHN G. MORRISON, JR., FOR AND ON BEHALF OF HIMSELF and all other members of the Chippewa Tribe of Indians in Minnesota similarly situated, appellants.
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR; CATO Sells, Commissioner of Indian Affairs; and John Burke, Treasurer of the United States.
} No. 2908.

The argument in the above-entitled cause was commenced by Mr. Webster Ballinger, attorney for the appellants, and was continued by Mr. C. E. Wright, attorney for the appellees, and was concluded by Mr. Webster Ballinger, attorney for the appellants.

16 In the Court of Appeals of the District of Columbia.

JOHN G. MORRISON, JR., FOR AND ON BEHALF OF HIMSELF and all other members of the Chippewa Tribe of Indians in Minnesota similarly situated, appellants.
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR; CATO Sells, Commissioner of Indian Affairs; and John Burke, Treasurer of the United States. } No. 2908.

Opinion.

Mr. Justice Robb delivered the opinion of the court:

Appeal from a decree in the Supreme Court of the District dismissing a bill in equity brought by members of the Chippewa Tribe of Indians of Minnesota, for themselves and others similarly situated, to enjoin the expenditure by the appellees of the sum of $160,000.

Section 1 of the act of Jan. 1, 1889, (25 Stat. 642), provided that the proceeds from the disposal of lands ceded to the United States by these Indians should be "placed in the Treasury of the United States to the credit of the Chippewa Indians in the State of Minnesota as a permanent fund," and that such fund should draw interest at the rate of 5% per annum, payable annually, for the period of fifty years, which interest and fund should be expended for the benefit of the Indians; three-fourths of the interest on the fund to be paid annually to the Indians for their support and one-fourth to be annually "devoted exclusively to the establishment and maintenance of a system of free schools among said Indians." At the expiration of the fifty years the so-called permanent fund was to be divided per capita. The section contained this proviso: "That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof."

17 Pursuant to the authority contained in the above proviso, Congress included a provision in the Indian appropriation bill of August 1, 1914, making appropriation for the Indian service for the fiscal year 1915 (as had been done for several years previously), specifically authorizing the Secretary of the Interior to withdraw from the Treasury of the United States, "at his discretion," a stated sum including an item of $160,000 from the principal of said Chippewa fund "and to use the same for the purpose of promoting civilization and self-support among the said Indians in manner and for the purposes provided in said act." The Secretary exercised the discretion thus granted and expended $160,000 for the specific purpose named. During the last session of the 63rd Congress the regular annual Indian appropriation bill failed of passage. That the

current and contingent expenses of the Indian Bureau might be met and treaty stipulations be carried out, Congress passed a joint resolution, approved March 4, 1915 (38 Stat., 582, 590, 591) "Making appropriations for current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes." The resolution provides that all appropriations "for current and contingent expenses of the Bureau of Indian Affairs and for fulfilling treaty stipulations with various Indian tribes which shall remain unprovided for on June 30, 1915, are continued and made available for and during the fiscal year 1916 to the same extent, in detail, and under the same conditions, restrictions, and limitations for the fiscal year 1916 as the same were provided for on account of the fiscal year 1915 in the Indian appropriation act for that fiscal year."

The question is presented, therefore, whether this joint resolution makes available for the fiscal year 1916 an additional sum of $160,000 for the purpose of promoting civilization and self-support among these Indians. In approaching a consideration of this question, we must bear in mind that this fund is a part of a trust fund in the control of the United States to the credit of these Indians (Minnesota vs. Hitchcock, 185 U. S. 373, 394), and that the expenditure
18 thereof must be in accordance with the provisions of the trust. United States vs. Mille Sac Chippewas, 229 U. S. 458. The Controller of the Treasury, to whom the question was submitted by the Interior Department, said: "While under a strict technical construction it might be said that the promotion of civilization and self-support among these Indians is neither a current nor contingent expense of the Bureau of Indian Affairs nor a fulfillment of treaty stipulations, I do not think it was the intent or purpose of the resolution to so limit the appropriation made thereunder. The title of the resolution defines its scope as equally as broad as that of the regular annual appropriation act. And I think it was the intention of Congress to provide, by this joint resolution, for the continuation during the fiscal year 1916 of all operations of the Bureau of Indian Affairs that were provided for in the Indian appropriation act for the fiscal year 1915, except such as, by their nature, were clearly intended to be completed during the said fiscal year."

We already have seen that under said act of 1889, creating this trust fund, three-fourths of the interest accruing on that fund was to be expended annually for the support of these Indians, while the other one-fourth of such interest was to be devoted to the establishment and maintenance of a system of free schools for their benefit. It is apparent, therefore, that their support and education were assured through the expenditure of these large sums. As a precautionary measure, however, Congress reserved the right, in its discretion, from time to time, to appropriate not exceeding 5% of the principal of said trust fund for the promotion of "civilization

and self-support among said Indians." But when Congress exercised this discretion, as it did in the appropriation act of 1915 and previously, the sum thus appropriated formed no part of the appropriations for the current and contingent expenses of the Bureau of Indian Affairs. It was not a current expense, for that term has a well-understood meaning. By it is meant regular and ordinary expenses and not expenses of a special, unusual, or extraordinary character. Taylor vs. Davis, 110 U. S., 330, 338; Sheldon vs. Purdy, 17 Wash., 135. Nor was it a contingent expense. In addition
19 to the usual expenditures authorized in appropriation acts, it is customary for Congress to make a limited appropriation for "contingent expenses," such as are incidental to any great business, which can not well be foreseen and therefore can not be specifically named. Dunwoody vs. United States, 22 Ct. of Claims, 269, 280. The $160,000 item in the appropriation for the fiscal year 1915 was a special appropriation to be expended according to the terms of the trust. Clearly, therefore, it was neither a current nor contingent expense of the Bureau of Indian Affairs. Forming no part of the current or contingent expenses of that bureau, and clearly not within any treaty stipulation, it necessarily follows that it was not within the joint resolution under consideration. The words of the resolution not being doubtful or ambiguous, we are not at liberty to consider the title thereof, since it is only where ambiguity exists in the context that the title is of any importance. Cornell vs. Coyne, 192 U. S., 418.

We conclude, therefore, that the Interior Department was without legal authority to encroach upon this trust fund, and hence that the beneficiaries of the trust are entitled to the relief prayed. The decree is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and *remanded*.

20 Monday, April 10th, A. D. 1916.

JOHN G. MORRISON, JR., FOR AND ON behalf of himself and all other members of the Chippewa Tribe of Indians in Minnesota similarly situated, appellants, v. FRANKLIN K. LANE, SECRETARY OF THE Interior; Cato Sells, Commissioner of Indian Affairs; and John Burke, Treasurer of the United States.	No. 2908. April term, 1916.

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from

the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed, with costs; and that this cause be, and the same is hereby, remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this court.

Per Mr. Justice Robb, April 10, 1916.

21 In the Court of Appeals of the District of Columbia.

JOHN G. MORRISON, JR., FOR AND ON BEHALF OF HIMself and all other members of the Chippewa Tribe of Indians in Minnesota similarly situated,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR AND Cato Sells, Commissioner of Indian Affairs, and John Burke, Treasurer of the United States. } No. 2908.

Motion for allowance of appeal to the Supreme Court of the United States.

Come now the appellees in the above-entitled cause, and respectfully show that on or about April 10, 1916, this court entered a judgment herein in favor of the appellant and against the appellees, reversing the judgment of the Supreme Court of the District of Columbia in favor of appellees; in which judgment of this court certain errors were committed to the prejudice of the appellees, all of which will appear in detail in the assignment of errors filed herewith.

The appellees further show that the judgment of the Court of Appeals in this cause is subject to review by the Supreme Court of the United States for the following reasons:

1. That appeal lies under paragraph 5 of section 250 of the
22 Judicial Code, being the act of March 3, 1911, for that the validity of the authority, as well as the existence and scope of the power and the duty of the appellees, as officers of the United States, as exercised or attempted to be exercised in and over the subject matter of the suit, are drawn in question.

2. That appeal lies under paragraph 6 of section 250 of said code, for that the construction of a law of the United States is drawn in question by the appellees, defendants in the case, who asserted, acted, and relied upon a construction of the joint resolution of March 4, 1915 (38 Stat., 1228), contrary to the construction placed upon said law by this court.

Wherefore, appellees pray the allowance of an appeal to the Supreme Court of the United States for the correction of the errors

complained of, and that the mandate of this court be stayed until further order.

FRANKLIN K. LANE,
Secretary of the Interior.
CATO SELLS,
Commissioner of Indian Affairs.
JOHN BURKE,
Treasurer of the United States.

By their attorneys:

ALEXANDER T. VOGELSANG,
Solicitor for the Department of the Interior.
JOHN E. LASKEY,
U. S. Attorney, D. C.
C. EDWARD WRIGHT,
Assistant Attorney for the Department of the Interior.

23 In the Court of Appeals for the District of Columbia.

JOHN G. MORRISON, JR., FOR AND ON BEHALF OF HIMself and all other members of the Chippewa Tribe of Indians in Minnesota similarly situated,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, AND Cato Sells, Commissioner of Indian Affairs, and John Burke, Treasurer of the United States.
} No. 2908.

Assignment of errors.

The appellants hereby assign the following errors in the decision of the court in the above-entitled cause:

1. The court erred in reversing the judgment of the Supreme Court of the District of Columbia in favor of appellees and against the appellant, and in remanding the cause for further proceedings.

2. The court erred in not affirming the judgment of the Supreme Court of the District of Columbia rendered in this cause.

3. The court erred in holding and deciding that the Interior Department was and is without legal authority or power to use or expend any or all of the sum of $160,000, from the funds of the Chippewa Indians of Minnesota, during the fiscal year ending June 30, 1916.

24 4. The court erred in holding and deciding that the Congress, by its joint resolution of March 4, 1915 (38 Stat., 1228), failed to reappropriate for the fiscal year 1916 or to authorize the expenditure during that year of the said sum of $160,000 for the use and benefit of the Chippewa Indians of Minnesota.

5. The court erred in holding and deciding that the use of said sum of $160,000 is not a current expense of the Bureau of Indian Affairs.

6. The court erred in holding and deciding that the language of the said joint resolution of March 4, 1915, to wit, "for current and contingent expenses of the Bureau of Indian Affairs and for fulfill-

ing treaty stipulations with various Indian tribes which shall remain unprovided for on June 30, 1915," does not include or authorize the expenditure of said sum of $160,000.

7. The court erred in holding and deciding that the $160,000 item in the appropriation for the fiscal year 1915 was a special appropriation.

8. The court erred in holding and deciding that the language of the title of the said joint resolution can not be considered in construing the provisions of said resolution.

9. The court erred in failing to hold and decide that by the joint resolution of March 4, 1915, Congress intended to continue, and in fact did continue, the provisions of the Indian appropriation act for the year 1915 through the fiscal year 1916 in respect of the said item of $160,000, and did intend to authorize, and in fact
25 did authorize, the Indian Department to expend said sum of $160,000 during the fiscal year 1916 for the purpose of promoting civilization and self-support among the Chippewa Indians of Minnesota.

10. The court erred in failing to affirm and to follow the ruling and construction given to said joint resolution by the Comptroller of the Treasury.

11. The court erred in failing to construe said joint resolution as authorizing the Secretary of the Interior and the Commissioner of Indian Affairs to expend said sum of $160,000 during the fiscal year 1916 out of the principal sum of the funds of the Chippewa Indians of Minnesota in the manner and for the purpose the same was used during the fiscal year 1915.

ALEXANDER T. VOGELSANG,
Solicitor for the Department of the Interior.
JOHN E. LASKEY,
U. S. Attorney, D. C.
C. EDWARD WRIGHT,
Assistant Attorney for the Department of the Interior.

Endorsed: No. 2908. John G. Morrison, etc., appellant, vs. Franklin K. Lane, Secretary of the Interior, et al. Motion for allowance of appeal and to stay mandate and assignment of errors. Court of Appeals, District of Columbia. Filed Apr. 21, 1916. Henry W. Hodges, clerk.

26 Saturday, April 22d, A. D. 1916.

JOHN G. MORRISON, JR., FOR AND ON BEHALF OF HIMSELF and all other members of the Chippewa Tribe of Indians in Minnesota similarly situated, appellants.
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR; CATO Sells, Commissioner of Indian Affairs; and John Burke, Treasurer of the United States.
} No. 2908.

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above-entitled cause,

and to stay the mandate until further order, it is by the court this day ordered that said motion be, and the same is hereby, granted.

27 UNITED STATES OF AMERICA, *ss:*

To John G. Morrison, jr., for and on behalf of himself and all other members of the Chippewa Tribe of Indians in Minnesota similarly situated, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Franklin K. Lane, Secretary of the Interior; Cato Sells, Commissioner of Indian Affairs; and John Burke, Treasurer of the United States, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Seth Shepard, chief justice of the Court of Appeals of the District of Columbia, this 22d day of April, in the year of our Lord one thousand nine hundred and sixteen.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged this 25th day of April, 1916.

WEBSTER BALLINGER,
Counsel for John G. Morrison, jr., et al.

28 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 27, inclusive, constitute a true copy of the transcript of record and proceedings of the said Court of Appeals in the case of John G. Morrison, jr., for and on behalf of himself and all other members of the Chippewa Tribe of Indians in Minnesota similarly situated, appellant, vs. Franklin K. Lane, Secretary of the Interior; Cato Sells, Commissioner of Indian Affairs; and John Burke, Treasurer of the United States, No. 2908, April term, 1916, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 27th day of April, A. D. 1916.

[SEAL.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

(Indorsement on back:) File No. 25299. District of Columbia Court of Appeals. Term No. 486. Franklin K. Lane, Secretary of the Interior; Cato Sells, Commissioner of Indian Offairs; and John Burke, Treasurer of the United States, appellants, vs. John G. Morrison, jr., for and on behalf of himself and all other members of the Chippewa Tribe of Indians in Minnesota similarly situated. Filed May 17th, 1916. File No. 25299.

○

INDEX AND SUMMARY.

	Page.
THE FACTS	1
THE QUESTION INVOLVED	9
THE ARGUMENT	
I. The question involved is merely: What was the intent of Congress? Did it intend to continue for the fiscal year 1916 the same appropriation for the "purpose of promoting civilization and self-support" among the Chippewa Indians of Minnesota which had been made for the fiscal year 1915, or did it regard that appropriation as merely a special payment for 1915 which was purposely to be omitted in 1916?	14
II. Every Indian appropriation bill from the year 1892 down to the year 1915 contained an appropriation for civilization and self-support among the Chippewa Indians of Minnesota	17
III. The Chippewa Indians' civilization and relief appropriation which had been made every year from 1893 to 1914 was either a "current and contingent expense of the Indian Bureau" or was "for fulfilling treaty stipulations with various Indian tribes," as those words were used in all the Indian appropriation acts prior to 1914, and as they were used in the joint resolution of March 4, 1915	25
THE PLAINTIFF'S CONTENTION	30
CONCLUSION	32

16074—17——1

CASES CITED.

	Page.
Sheldon v. *Purdy*, 17 Wash. 135	27
Taylor v. *Davis*, 110 U. S. 330, 338	27
United States v. *Kagama*, 118 U. S. 37	29
22 Decisions Comptroller Treas. 57, 60	14

STATUTES.

	Page.
16 Stat. 866	544
25 Stat. 642	2, 15, 17, 28
26 Stat. 336, 357	18
27 Stat. 120, 138	18, 19
27 Stat. 612, 632	19
28 Stat. 286, 289, 290	19
28 Stat. 876, 880, 881	19
29 Stat. 321, 325	19
30 Stat. 62, 67	19
30 Stat. 571, 575, 576	19
30 Stat. 924, 928	19
31 Stat. 221, 226	19
31 Stat. 1058, 1063	20
32 Stat. 245, 249	20
32 Stat. 982, 986	20
33 Stat. 189, 193, 194	20
33 Stat. 1048, 1051	20
34 Stat. 325, 350	20, 29
34 Stat. 1015, 1033	20, 29
35 Stat. 70, 82, 83	20, 29
35 Stat. 781, 794	20, 29
36 Stat. 269, 276	20, 21, 22
36 Stat. 1058, 1065	21
37 Stat. 518, 525	22
38 Stat. 77, 88	23
38 Stat. 582, 590, 591, 596	3, 5, 10, 17, 23, 29
38 Stat. 1228	4, 10, 25

RESOLUTION.

	Page.
Joint Resolution, March 4, 1915 (38 Stat. 1228)	4, 6, 8, 9, 10, 25, 29, 31, 32

HOUSE BILL.

	Page.
H. R. 20150, 63d Cong., 3d Sess	6, 10

HOUSE DOCUMENT.

	Page.
H. Doc. No. 1167, 61st Cong., 3d Sess	22

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

FRANKLIN K. LANE, SECRETARY OF THE Interior; Cato Sells, Commissioner of Indian Affairs; and John Burke, Treasurer of the United States, appellants,

v.

JOHN G. MORRISON, JR., FOR AND ON behalf of himself and all other members of the Chippewa Tribe of Indians in Minnesota, similarly situated, appellees.

No. 169.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE APPELLANTS.

THE FACTS.

This is an appeal from a decree of the Court of Appeals of the District of Columbia reversing a decree of the Supreme Court of the District of Columbia which had dismissed the plaintiff's bill. The plaintiff, suing for himself and all other members of the Chippewa Tribe of Indians in Minnesota

similarly situated, filed, on September 17, 1915, a bill in equity in the Supreme Court of the District of Columbia against Franklin K. Lane, Secretary of the Interior; Cato Sells, Commissioner of Indian Affairs; and John Burke, Treasurer of the United States.

The bill set forth that by an act of January 14, 1889 (25 Stat., 642), provision was made for a cession by the Chippewa Indians of all their lands in Minnesota to the United States, and for the sale of said ceded lands and timber thereon by the United States, and for the deposit of the net proceeds derived from such sale from time to time in the Treasury of the United States to the credit of the Chippewa Indians as a permanent fund, which fund should draw interest at 5 per cent for 50 years, which interest and permanent fund the statute provided should be expended for the benefit of the Indians in the following manner:

One-half of the interest was to be annually paid in cash to the heads of families, etc., for their own use; one-quarter of the interest was to be paid to all other classes of Chippewa Indians; and the remaining quarter was to be devoted by the Secretary of the Interior exclusively to the establishment and maintenance of a system of free schools among the Indians. At the expiration of fifty years the permanent fund was to be divided and paid in equal shares to the various Indians then living, "Provided that Congress may, in its discretion, from time to time,

during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among said Indians, a portion of said principal sum not exceeding five per centum thereof."

The bill set forth that by the Indian appropriation act of August 1, 1914 (38 Stat., 582, 590), for the fiscal year ending June 30, 1915, it was provided as follows:

> The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of $205,000, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section seven of the act of January fourteen, eighteen hundred and eighty-nine, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to use the same for the purpose of promoting civilization and self-support among the said Indians in manner and for purposes provided for in said act.

Forty thousand dollars of the above amount of $205,000 to be used in the purchase of lands for homeless nonremoval Mille Lacs Indians to whom allotments had not heretofore been made; and not to exceed $5,000 of the above sum of $205,000 to be expended in the removal of Chippewa Indian bodies from burial grounds in Wisconsin.

The bill further set forth that the annual Indian appropriation bill for the fiscal year ending June 30,

1916, failed of passage by Congress, and that in lieu thereof a joint resolution was passed and approved March 4, 1915 (38 Stat., 1228), the pertinent parts of which were as follows:

> That all appropriations for the current and contingent expenses of the Bureau of Indian Affairs and for fulfilling treaty stipulations with various Indian tribes which shall remain unprovided for on June thirtieth, nineteen hundred and fifteen, are continued and made available for and during the fiscal year nineteen hundred and sixteen to the same extent, in detail, and under the same conditions, restrictions, and limitations for the fiscal year nineteen hundred and sixteen as the same were provided for on account of the fiscal year nineteen hundred and fifteen in the Indian appropriation act for that fiscal year. For all of such purposes a sufficient sum is appropriated, out of any money in the Treasury not otherwise appropriated, or out of funds to the credit of Indians as the same were respectively provided in the Indian appropriation act for the fiscal year nineteen hundred and fifteen: *Provided*, That the appropriations from the Treasury of the United States or from Indian funds shall not exceed in the aggregate the amounts of such appropriations for the fiscal year nineteen hundred and fifteen: *Provided further*, That this joint resolution shall not be construed as providing for or authorizing the duplication of any special payment or for the execution of any purpose provided for in said appropriation act that

was intended to be paid only once or done solely on account of the fiscal year nineteen hundred and fifteen.

The plaintiff then alleged in his bill that no part of the $205,000 appropriated by the Indian appropriation act for the fiscal year ending June 30, 1915, was for the current and contingent expenses of the Bureau of Indian Affairs, or for fulfilling treaty stipulations; and that said appropriation of $205,000 was a special appropriation for specific purposes, the expenditure thereof (except the $40,000 item not involved in this suit) being limited exclusively to the fiscal year ending June 30, 1915, and was not intended as a regular annual appropriation, but was intended to be made only once, and solely on account of the fiscal year ending June 30, 1915.

The bill further alleged that the plaintiff was informed that the Secretary of the Interior and the Commissioner of Indian Affairs, acting on the advice of the Comptroller of the Treasury, were about to expend a sum of $160,000 of the trust funds of the plaintiff Indians, and the plaintiff accordingly asked for an injunction against such expenditure.

The Secretary of the Interior and the Commissioner of Indian Affairs, in answer to the rule to show cause why an injunction should not issue, made a return in which they set forth:

(*a*) That for the fiscal years from 1891 to 1911, inclusive, appropriations for the relief and civilization of the Chippewa Indians of Minnesota had been

annually made by Congress, reimbursible out of principal funds that might be deposited in the Treasury to the credit of the Indians;

(*b*) That from 1911 to 1914, inclusive, Congress made similar appropriations for the relief and civilization of the Chippewa Indians, payable directly from tribal funds;

(*c*) That in the Indian appropriation bill for 1916, officially known as "H. R. 20150, 63d Congress, 3d session," an authorization similar to that contained in the appropriation bills for the fiscal years 1912 to 1915, inclusive, was inserted;

(*d*) That as said Indian appropriation bill for the fiscal year ending June 30, 1916, failed to pass, Congress, by the joint resolution dated March 4, 1915, continued and made available for the fiscal year ending June 30, 1916, the same appropriation authorized by law for the current and contingent expenses of the Indians during the fiscal year 1915;

(*e*) That the appropriations in the various appropriation bills from 1891 to 1915, above mentioned, had been relied upon annually for the expenses of the administration at the several Chippewa agencies and for the direct benefit of said Indians, the amount spent out of the funds of the Chippewa Indians of Minnesota for the fiscal year ending June 30, 1915, having been $152,312.31;

(*f*) That the Secretary of the Interior received an opinion from the Comptroller of the Treasury, on March 23, 1915, to the effect that by reason of the

Joint Resolution the Secretary of the Interior was authorized to withdraw and expend from the principal fund of the Chippewa Indians not exceeding $160,000; and that on reconsideration of this opinion, and after full argument by the general counsel of the Chippewa Indians of Minnesota, the Comptroller of the Treasury, on July 31, 1915, adhered to his decision.

The Secretary of the Interior and the Commissioner of Indian Affairs further set forth that they had entered into contracts and created obligations for the fiscal year 1916 to an amount aggregating $159,365.60, of which amount $32,649.41 had been actually paid out and advanced by the Treasury to the various disbursing agents for authorized expenditures; and they set forth that as there were no other funds available for the payment of the necessary expenses paid and contracted for, unless the said sum of $160,000 was available, then all the Chippewa agencies, and the other activities for the benefit of the Indians, must be abandoned; said expenses embracing subsistence supplies, clothing, forage, fuel, medical supplies, etc.

On October 1, 1915, the Secretary of the Interior and the Commissioner of Indian Affairs filed a motion to dismiss the bill on the ground that the matter sought to be controlled presented questions exclusively within the jurisdiction of the Comptroller of the Treasury, and that the decision of the Comptroller of the Treasury to the effect that the defendants might lawfully expend the money was not reviewable

by any court; also on the ground that the matter sought to be enjoined did not involve any irreparable injury or any grounds for interference by a court of equity, inasmuch as the funds sought to be expended were for the use and benefit of the Chippewa Indians of Minnesota.

After certain amendments to the bill, which were allowed by the Supreme Court of the District of Columbia, the court dismissed the bill October 22, 1915, the opinion being filed December 9, 1915. (R., pp. 13, 14.)

On appeal being taken to the Court of Appeals of the District of Columbia, that court reversed the decision of the lower court April 10, 1916; whereupon appeal was taken to this court under paragraphs 5 and 6 of section 250 of the Judicial Code.

ASSIGNMENT OF ERRORS.

The defendants assigned in general the following errors:

1. The court erred in failing to hold and decide that by the joint resolution of March 4, 1915, Congress intended to continue, and in fact did continue, the provisions of the Indian appropriation act for the year 1915 through the fiscal year 1916 in respect of the said item of $160,000, and did intend to authorize, and in fact did authorize, the Indian Department to expend said sum of $160,000 during the fiscal year 1916 for the purpose of promoting civilization and self-support among the Chippewa Indians of Minnesota.

2. The court erred in holding and deciding that the language of the said joint resolution of March 4, 1915, to wit, "for current and contingent expenses of the Bureau of Indian Affairs and for fulfilling treaty stipulations with various Indian tribes which shall remain unprovided for on June 30, 1915," does not include or authorize the expenditure of said sum of $160,000.

3. The court erred in holding and deciding that the $160,000 item in the appropriation for the fiscal year 1915 was a special appropriation.

4. The court erred in holding and deciding that the language of the title of the said joint resolution can not be considered in construing the provisions of said resolution.

5. The court erred in failing to affirm and to follow the ruling and construction given to said joint resolution by the Comptroller of the Treasury.

THE QUESTION INVOLVED.

The question presented by this case is: Was the appropriation made by the Indian appropriation act for the fiscal year ending June 30, 1915, to the amount of $160,000, "for the purpose of promoting civilization and self-support" among the Chippewa Indians in the State of Minnesota, a part of the "current and contingent expenses of the Bureau of Indian Affairs," for that fiscal year, or made "for fulfilling treaty stipulations" with the Chippewa Tribe, or was that appropriation a "special payment" or "for the execution of a purpose that was

intended to be paid only once or done solely on account of the fiscal year 1915?"

For convenience the Indian appropriation act of August 1, 1914, c. 222 (38 Stat. 582–590, 591), for the fiscal year ending June 30, 1915, the Indian appropriation bill for the fiscal year ending June 30, 1916 (H. R. 20150, 63d Cong., 3d sess.), which failed to pass, and the joint resolution of March 4, 1915, 38 Stat. 1228, are here inserted in parallel columns, so that the exact similarity of language may be more easily noted.

ACT OF AUG. 1, 1914.	H. R. 20150.	JOINT RESOLUTION OF MAR. 4, 1915.
An act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and fifteen.	A bill making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and sixteen.	Joint resolution making appropriations for current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and sixteen.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes,	*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with the various Indian	*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That all appropriations for the current and contingent expenses of the Bureau of Indian Affairs and for fulfilling treaty stipulations with various Indian tribes, which shall remain unprovided for on June thirtieth, nineteen hundred and fifteen, are continued and made

and in full compensation for all offices the salaries for which are provided for herein for the service of the fiscal year ending June thirtieth, nineteen hundred and fifteen, namely:

tribes, and in full compensation for all offices the salaries for which are provided for herein for the service of the fiscal year ending June thirtieth, nineteen hundred and sixteen, namely:

available for and during the fiscal year nineteen hundred and sixteen to the same extent, in detail, and under the same conditions, restrictions, and limitations for the fiscal year nineteen hundred and sixteen as the same were provided for on account of the fiscal year nineteen hundred and fifteen in the Indian appropriation act for that fiscal year. For all of such purposes a sufficient sum is appropriated out of any money in the Treasury not otherwise appropriated, or out of funds to the credit of Indians, as the same were respectively provided in the Indian appropriation act for the fiscal year nineteen hundred and fifteen: *Provided*, That the appropriations from the Treasury of the United States or from Indian funds shall not exceed in the aggregate the amounts of such appropriations for the fiscal year nineteen hundred and fifteen: *Provided further*, That this joint resolution shall not be construed as providing for or authorizing the duplication of any special payment or for the execution of any purpose pro-

vided for in said appropriation act that was intended to be paid only once or done solely on account of the fiscal year nineteen hundred and fifteen: *Provided further*, That appropriations continued hereunder shall be available for the maintenance, repair, and operation of motor-propelled and horse-drawn passenger-carrying vehicles in the same manner as appropriations were available for those purposes during the fiscal year nineteen hundred and fifteen.

The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of $205,000, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section seven of the act of January fourteenth, eighteen hundred and eighty-nine, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to use the same for the purpose of promoting civilization and self support

The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of $185,000, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section seven of the act of January fourteenth, eighteen hundred and eighty-nine, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to use the same for the purpose of promoting civilization and self-support

among the said Indians in manner and for purposes provided for in said act: *Provided*, That not to exceed $40,000 of this amount may be used in the purchase of lands for homeless non-removal Mille Lacs Indians, to whom allotments have not heretofore been made, to be immediately available and to remain available until expended, said lands to be held in trust and may be allotted to said Indians, in the discretion of the Secretary of the Interior, subject to the provisions of the act of February eighth, eighteen hundred and eighty-seven (Twenty-fourth Statutes at Large, page three hundred and eighty-eight, as amended): *Provided further*, That not to exceed $5,000 of the amount herein appropriated may be expended in the removal of Chippewa Indian bodies from the burial grounds in the vicinity of Wisconsin Point, Wisconsin, and their reinterment in an established cemetery in the city of Superior; said amount to cover markers for each grave or one monument, as may be found most suitable; and for

among the said Indians in manner and for purposes provided for in said act.

the removal and suitable burial and marking of the graves of Indian bodies at Mille Lacs, Gull Lake, and Sandy Lake, Minnesota.

In the Decisions of the Comptroller of the Treasury, volume 22, pages 57, 60, under date of July 31, 1915, it is said that the appropriation of $185,000 in the said Indian appropriation bill which failed of passage in 1915 "was agreed to by the conferees, and it was not one of the disputed points which caused the failure of the bill." (See Appendix A.)

ARGUMENT.

I.

The question involved is merely: What was the intent of Congress? Did it intend to continue for the fiscal year 1916 the same appropriation for the "purpose of promoting civilization and self-support" among the Chippewa Indians of Minnesota which had been made for the fiscal year 1915, or did it regard that appropriation as merely a special payment for 1915 which was purposely to be omitted in 1916?

It is clear that if the language of the joint resolution is to be read as the plaintiff interprets it, there is nothing elsewhere in the joint resolution which would have appropriated a single dollar for the Chippewa Indians as a tribe; and, therefore, for the whole of the fiscal year ending June 30, 1916, the Secretary of the Interior would have been debarred from paying out any money whatsoever for the

beneficial purposes above stated, and the Indians themselves would have been the direct sufferers.

In order to see whether Congress is likely to have intended any such result, it will be helpful to consider whether the appropriation made for the fiscal year ending June 30, 1915, was an isolated instance or whether it was in pursuance of a long and well-established policy.

The Court of Appeals states (R. 17):

> The $160,000 item in the appropriation for the fiscal year 1915 was a special appropriation to be expended according to the terms of the trust. Clearly, therefore, it was neither a current nor contingent expense of the Bureau of Indian Affairs.

The "terms of the trust," thus referred to, were to be found, of course, in the language of the purposes for which the expenditure was to be made; namely, "to use the same for the purpose of promoting civilization and self-support among the said Indians in the manner and for the purposes provided for in said act," viz, the act of January 14, 1889, 25 Stat., 642.

The Chippewa Indians' Land Cession Act of 1889.

It is important to understand this original act of January 14, 1889, and the terms of the trust so constituted by it. It was entitled: "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota."

It provided in section 1 for the appointment of three commissioners to negotiate with the Chippe-

was for the complete cession and relinquishment "in writing of all their title and interest in and to all the reservations of the said Indians in the State of Minnesota."

With certain exceptions, other sections provided for removal of the Chippewas to the White Earth Reservation and the survey and sale of the ceded lands.

Section 7 contained elaborate provisions for the accumulation in the Treasury of the United States of the proceeds of the ceded lands as the same should from time to time be sold, the principal of which fund and the interest were to be expended and divided for the benefit, "civilization, and support" of the individual Chippewas and of the Chippewas as a tribe as follows:

Inasmuch as the fund would arise gradually; and as at the beginning, and before the fund began to accumulate, there might be no interest upon the fund, Congress especially covenanted to advance annually the sum of $90,000, which should constitute the annual interest, referred to in the act and the annual use for which was specifically provided: viz, one-half to be paid to the heads of families, one-quarter to other classes of Indians, and one-quarter for free schools. The act provided that when the capital or principal fund should exceed the sum of $3,000,000 the United States was to be reimbursed out of such excess "for all the advances of interest made as herein contemplated and other expenses hereunder." The principal fund was to accumulate for 50 years and at the end of that time was to be divided among

the Indians in equal shares. It was expressly provided, however, "that Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum not exceeding five per centum thereof."

As the interest on the principal fund was to be divided, three-quarters amongst certain individuals of the tribe and one-quarter for free schools, it will be seen that if the tribe as a tribe was to be cared for by the United States Government it must be cared for out of this discretionary sum which Congress could appropriate annually from the principal of the trust fund. If Congress should fail, therefore, in any year, to exercise its discretion to make an appropriation out of the principal of the trust fund, the Chippewa Indians as a tribe would not receive the benefit of any appropriation and, for that year, would be deprived of the protective care which Congress has, for the most part, been so careful to bestow upon its Indian wards.

Every Indian appropriation bill from the year 1892 down to the year 1915 contained an appropriation for civilization and self-support among the Chippewa Indians of Minnesota.

In the first Indian appropriation act passed after the act of 1889 containing the above agreement with the said Indians, Congress appropriated $100,000, reimbursable, from the proceeds of the sale of land,

which sum included payment for erection and maintenance of schools, as well as other expenditures for the benefit of the Indians. (Act of Aug. 19, 1890, c. 807, 26 Stat., 336, 357.) In the margin of this statute are found the descriptive words "Relief and civilization of Chippewas."

In the Indian appropriation act for the fiscal year ending June 30, 1893, it was enacted:

> That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department for the year ending June thirtieth, eighteen hundred and ninety-three, and fulfilling treaty stipulations with the various Indian tribes, namely:

and following the word "namely," among the various other appropriations was the following:

> For the purchase of material and employment of labor for the erection of houses for Indians; for the purchase of agricultural implements, stock, seed, subsistence, and so forth; for breaking and fencing land; for payment of expenses of delegations of Chippewa Indians to visit White Earth Reservation; for the erection and maintenance of day and industrial schools; for pay of employees; for pay of commissioners and their expenses; for removal of Indians and for their allotments, to be reimbursed to the United States out of the proceeds of sale of their lands, one hundred and fifty thousand dollars.

The marginal title of this appropriation was "Expenses for civilization, etc." See act of July 13, 1892, 27 Stat. 120, 138.

As the principal fund had not at that time accumulated from sale of land, the amount appropriated was "to be reimbursed to the United States out of the proceeds of sales of their lands," the appropriation, therefore being, in effect, an appropriation in advance of the principal of the trust fund to be repaid when the trust fund should eventually accrue.

This appropriation for the civilization of the Chippewa Indians, payable or reimbursible to the United States out of the principal of their trust funds derived from the sale of the ceded lands, was made in precisely the same language—but in varying sums—in every subsequent Indian appropriation act down to the year 1911.

Act of March 3, 1893, c. 209 (27 Stat. 612, 632), $75,000;

Act of August 15, 1894, c. 290 (28 Stat. 286, 289, 290), $50,000;

Act of March 2, 1895, c. 188 (28 Stat. 876, 880, 881), $50,000;

Act of June 10, 1896, c. 398 (29 Stat. 321, 325), $75,000;

Act of June 7, 1897, c. 3 (30 Stat. 62, 67), $75,000;

Act of July 1, 1898, c. 545 (30 Stat. 571, 575, 576), $75,000;

Act of March 1, 1899, c. 324 (30 Stat. 924, 928), $100,000;

Act of May 31, 1900, c. 598 (31 Stat. 221, 226), $100,000;

Act of March 3, 1901, c. 832 (31 Stat. 1058, 1063), $150,000;

Act of May 27, 1902, c. 888 (32 Stat. 245, 249), $150,000;

Act of March 3, 1903, c. 994 (32 Stat. 982, 986), $150,000;

Act of April 21, 1904, c. 1402 (33 Stat. 189, 193, 194), $150,000;

Act of March 3, 1905, c. 1479 (33 Stat., 1048, 1051), $150,000;

Act of June 21, 1906, c. 3504 (34 Stat., 325, 350), $150,000;

Act of March 1, 1907, c. 2285 (34 Stat., 1015, 1033), $150,000;

Act of April 30, 1908, c. 153 (35 Stat., 70, 82, 83), $150,000;

Act of March 3, 1909, c. 263 (35 Stat., 781, 794), $150,000;

Act of April 4, 1910, c. 140 (36 Stat., 269, 276), $150,000.

In the Indian appropriation act of 1911 for the fiscal year ending June 30, 1912, a new form of language was used in making appropriation for the civilization of the Chippewas of Minnesota, and by

the act of March 3, 1911, c. 210 (36 Stat., 1058, 1065), it was provided as follows:

> The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of one hundred and sixty-five thousand dollars, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section seven of the act of January fourteenth, eighteen hundred and eighty-nine, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to use the same for the purpose of promoting civilization and self-support among the said Indians in manner and for purposes provided for in said act.

It will be noticed that this act, for the first time, authorized the Secretary of the Interior to withdraw the money from the Treasury of the United States. The previous acts had provided simply that the moneys appropriated should be reimbursable from the proceeds of the sale of lands.

The reason for this change of language was that by that date the principal fund had accrued to such a sum that payments could be properly appropriated out of it. It is to be noted that the act for the previous year (the act of Apr. 4, 1910) had contained a provision:

> That the Secretary of the Treasury shall transmit to Congress on the first Monday in

> December, nineteen hundred and ten, a statement by tribes and funds, of all moneys appropriated by Congress since July first, eighteen hundred and seventy-five, required by law to be reimbursed to the United States from Indian tribal funds held in trust or otherwise, showing the extent to which such reimbursements have been, or may now be accomplished.

In accordance with this, the Secretary of the Treasury had transmitted to Congress, dated December 12, 1910, a report (H. Doc. No. 1167, 61st Cong., 3d sess.) that for "relief and civilization of Chippewas in Minnesota" there had been appropriated from 1890 to 1910 $2,350,559 reimbursible out of principal; that for "advance interest" to these Indians "reimbursable" there had been appropriated every year $90,000—or a total $1,890,000; and that at the date of the report there were in the Treasury—of principal fund held for these Indians $6,901,163.68, and of the interest $1,702,316.22—a total of $8,603,479.90.

By the Indian appropriation act for the fiscal year ending June 30, 1913 (act of Aug. 24, 1912, c. 388, 37 Stat. 518, 525), it was again provided as follows:

> The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of one hundred and sixty-five thousand dollars, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section seven of the act of January fourteenth, eighteen hundred and

> eighty-nine, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to use the same for the purpose of promoting civilization and self-support among the said Indians in manner and for purposes provided for in said act.

By the Indian appropriation act for the fiscal year ending June 30, 1914 (act of June 30, 1913, c. 4, 38 Stat., 77, 88), it was again provided as follows:

> The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of $165,000, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section seven of the act of January fourteenth, eighteen hundred and eighty-nine, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to use the same for the purpose of promoting civilization and self-support among the said Indians in manner and for purposes provided for in said act.

By the appropriation act for the fiscal year ending June 30, 1915 (act of August 1, 1914, c. 222, 38 Stat., 582, 590, 591), it was provided as follows:

> The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of $205,000, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of

Minnesota, arising under section seven of the act of January fourteenth, eighteen hundred and eighty-nine, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to use the same for the purpose of promoting civilization and self-support among the said Indians in manner and for purposes provided for in said act: *Provided*, That not to exceed $40,000 of this amount may be used in the purchase of lands for homeless non-removal Mille Lacs Indians, to whom allotments have not heretofore been made, to be immediately available and to remain available until expended, said lands to be held in trust and may be allotted to said Indians, in the discretion of the Secretary of the Interior, subject to the provisions of the act of February eighth, eighteen hundred and eighty-seven (Twenty-four Statutes at Large, page three hundred and eighty-eight, as amended): *Provided further*, That not to exceed $5,000 of the amount herein appropriated may be expended in the removal of Chippewa Indian bodies from the burial grounds in the vicinity of Wisconsin Point, Wisconsin, and their reinterment in an established cemetery in the city of Superior; said amount to cover markers for each grave or one monument, as may be found most suitable; and for the removal and suitable burial and marking of the graves of Indian bodies at Mille Lacs, Gull Lake, and Sandy Lake, Minnesota.

And, as stated before, the Indian appropriation act failing for the fiscal year ending June 30, 1916, the

joint resolution of March 4, 1915 (38 Stat. 1228), was passed, which has been heretofore quoted in full so far as it applies to the present case.

The Chippewa Indians civilization and relief appropriation which had been made every year from 1893 to 1914 was either a "current and contingent expense of the Indian Bureau" or was "for fulfilling treaty stipulations with various Indian tribes," as those words were used in all the Indian appropriation acts prior to 1914, and as they were used in the joint resolution of March 4, 1915.

It has been shown *supra* that by Congressional appropriation every year from 1893 to 1914, the Secretary of the Interior was authorized to pay out of the principal fund for the civilization and relief and support of the Chippewa Indians as a tribe sums of money, varying according to the amount of the appropriation from year to year, from $50,000 to $165,000. There was not a single year in which Congress failed to make this appropriation for the relief and civilization of the Chippewa Indians as a tribe.

That Congress, itself, considered this appropriation which it had made thus uniformly every year since 1893 to be either current expense of the Indian Bureau, or else a fulfilling of a treaty stipulation, is to be seen from the fact that in every Indian appropriation bill Congress used the following language in the enacting clause:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the following sums be, and they are hereby, appropriated, out of

> any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and in full compensation for all offices the salaries of which are provided for herein for the service of the fiscal year ending June thirtieth, nineteen hundred and ———, namely:

It will be noted that the money is appropriated for three purposes, and for no others:

(*a*) For the purpose of paying the current and contingent expenses of the Bureau of Indian Affairs:

(*b*) For fulfilling treaty stipulations with various Indian tribes;

(*c*) For full compensation for the offices, the salaries of which are provided herein, the services of which are provided for the fiscal year ending June thirtieth, ———, namely:

The word "namely," however, must be inclusive of everything which follows it, and must refer back to everything which preceded it. Therefore, the specific appropriation for the Chippewa Indians which, in each of these statutes, follows the word "namely," must be an appropriation made for one of the three purposes above specified. It is clear that it is not an appropriation "in full compensation for all offices the salaries of which are provided for herein." It therefore must be either an appropriation for "current and contingent expenses of the Bureau of Indian Affairs," or an appropriation "for

fulfilling treaty stipulations with various Indian tribes."

If a uniform, constant, and uninterrupted practice of Congress for 22 years could settle the character of any appropriation, it would seem that the appropriation now in question should clearly come within the purview of the term, "current * * * expenses of the Indian Bureau."

The opinion of the Court of Appeals of the District of Columbia cites only two cases to support its very narrow construction of the words "current expense."

> It was not a current expense, for that term has a well-understood meaning. By it is meant regular and ordinary expenses and not expenses of a special, unusual, or extraordinary character. *Taylor* v. *Davis*, 110 U. S., 330, 338; *Sheldon* v. *Purdy*, 17 Wash., 135. (R. p. 17.)

The *Taylor case* is clearly not applicable, the point being whether trustees who have built certain fireproof safes and buildings in which to keep the trust property, also docks and levees, were entitled to charge the sums thus disbursed as expenses; the court held that they were hardly to be described as "expenses" at all, but were rather in the nature of investments, and if "expenses," then certainly of an extraordinary and unusual character.

In determining the interpretation to be given to the language used by Congress, however, the meaning given to the words "current expenses" when used in connection with trustees' accounts, or other financial

operations of a private nature, has a very exiguous bearing.

The real question is, what did Congress, itself, mean by the term as used in a very general enacting clause, in a statute dealing with an immense variety of items and subjects, and in a statute which was regularly recurring annual legislation.

When the Court of Appeals stated that "current expense" means "regular and ordinary expenses and not expenses of a special, unusual, or extraordinary character," it is difficult to see how it could fail to include the present expense within its own definition, for certainly the appropriation has been a regular one for 22 years; it has been an ordinary one for 22 years; and any appropriation which has been made without interruption for 22 years can not be termed of a special, unusual, or extraordinary character.

If, however, this court should be of opinion that this appropriation was not a current expense of the Indian Bureau, then the Government contends that Congress must certainly have intended to include it within the other purpose for which every Indian appropriation act made its appropriations in its enacting clause, viz, "for fulfilling treaty stipulations with various Indian tribes."

The word "treaty," as used in this connection, has been given by Congress a very broad and untechnical meaning.

While the act of January 14, 1889 (which originally provided for these appropriations for the civilization

and relief of the Chippewa Indians), was, of course, not technically a "treaty," inasmuch as since the act of March 3, 1871 (16 Stat. 544), no Indian nation or tribe "shall be acknowledged or recognized as an independent nation, tribe, or power, with whom the United States may contract by treaty" (see *United States* v. *Kagama* (1886), 118 U. S. 375), it has nevertheless been customary in Indian appropriation bills for Congress to denominate loosely as "treaties" all agreements made with the Indian tribes, whether made in the form of a technical treaty prior to 1871 or in the form of contracts and land cessions made with or to the United States by assent of the Indian tribes under an act of Congress since 1871.

Thus Congress, in the Indian appropriation acts in 1906, 1907, 1908, 1909, referred to this very Chippewa agreement contained in the act of 1889 as a treaty, and in those acts Congress inserted subheadings as follows:

"Chippewas of Minnesota, Reimbursable. (Treaty.)" (See 34 Stat. 325, p. 350; 34 Stat. 1015, p. 1033; 35 Stat. 70, pp. 82, 83; 35 Stat. 781, p. 794.)

So, Congress, in the very Indian appropriation act of 1914 (whose provisions were extended by the joint resolution of March 4, 1915) used the word "treaties," as applying indiscriminately to *agreements* since 1871 and to a technical treaty prior to 1871. (See 38 Stat. 582, p. 596):

> For fulfilling *treaties* with Pawnees, Oklahoma; for perpetual annuity to be paid in

cash to the Pawnees (article three, agreement of November twenty-third, eighteen hundred and ninety-two), $30,000; for support of two manual-labor schools (article three, treaty of September twenty-fourth, eighteen hundred and fifty-seven, $10,000.

THE PLAINTIFF'S CONTENTION.

The plaintiff contends that the appropriation by the Chippewa Indian appropriation act for the fiscal year ending June 30, 1915, was a "special payment," and that it was made "for the execution of" a "purpose provided for in said appropriation act that was intended to be paid only once or done solely on account of the fiscal year 1915." (R., p. 4.)

Strictly speaking, most of the payments in the appropriation act for the fiscal year 1915 were intended to be made solely on account of that year; but, in view of the fact that Congress had been making this appropriation for the civilization and relief of the Chippewa Indians every year for the past twenty years, it would seem little less than ridiculous to attribute to Congress an intent to call such an appropriation a "special payment" so as to bring it within the purview of the proviso of the joint resolution.

Congressional intent may to some degree be tested by a consideration of the effects which would follow the acceptance of the interpretation of the joint resolution urged by the plaintiff. Let us see what the situation was when the Indian appropriation act for the year ending June 30, 1916, failed to

pass Congress. The failure of that act meant practically a lack of authority in the Secretary of the Interior and the Commissioner of Indian Affairs to spend anything for any Indian tribe during 1916—not only for the Chippewa Indians but for any other tribe. It is unnecessary to enlarge upon the seriousness of such a situation. Congress saw it and afforded a remedy by the joint resolution of March 4, 1915. That joint resolution undoubtedly did afford a remedy; and provided for appropriations to be spent for the benefit of various other Indian tribes—the Sioux, the Crows, the Apaches, the Cheyennes, the Comanches, etc. That the joint resolution extended the terms of the previous Indian appropriation act for the fiscal year 1915 to a number of these other tribes, there can be no question. Is it conceivable that Congress deliberately intended to let the Chippewa Indians, for the first time in 20 years of legislation, go without their usual annual quota of subsistence, clothing, forage supplies, etc., for which appropriation had hitherto been made to them?

It appears that there were in 1915 Chippewa Indians in Minnesota living to the number of 11,587. The principal of their trust fund was on July 1, 1915, $6,108,399.64. The accrued interest on this fund at 5 per cent, subject to withdrawal on July 1, 1915, was $275,493.26. Of this sum, $229,316.60 was subject to per capita distribution according to the act of January 14, 1889, *supra*, and $46,176.65 was available for free schools. Of the $229,316.60 set

aside for per capita distribution, $214,359.50 was available, and this latter sum divided among the Indians per capita would amount to $18.50 to each recipient. (See Appendix B.)

If, therefore, no part of the principal fund could be expended by the Secretary of the Interior during the year ending June 30, 1916, for the general relief, support, and civilization of these Chippewas as a tribe, the above scanty sums (exclusive of the one-quarter of the interest to be spent for free schools) would represent all that the Indians would receive from the Government, whereas during the prior year they had received $160,000 in addition to the interest. What explanation has the plaintiff, who claims to represent the members of the Chippewa Tribe themselves, to offer for the assumption that Congress deliberately intended to neglect the Chippewa Tribe and to deprive the Secretary of the Interior of his power to expend a portion of the principal of the tribal fund of these Indians for their relief and benefit? No adequate explanation has been offered by the plaintiff or his counsel, nor can any such explanation be offered.

CONCLUSION.

The Government contends that it was the intent of Congress in enacting the joint resolution of March 4, 1915, to make available for the fiscal year ending June 30, 1916, the same appropriation of $160,000 "for the purpose of promoting civilization and self-support" among the Chippewa Indians of Minnesota as had been made in the Indian appropriation act

for the fiscal year ending June 30, 1915, an appropriation of varying amounts for the same purpose having been made for the prior 22 years in each successive Indian appropriation act; and that, therefore, the judgment and decree of the Court of Appeals of the District of Columbia should be reversed and the plaintiff's bill be dismissed.

Respectfully submitted.

CHARLES WARREN,
Assistant Attorney General.

NOVEMBER, 1917.

APPENDIX A.

(22 decisions of the Comptroller of the Treasury, 57.)

Comptroller Downey to the Secretary of the Interior, July 31, 1915:

I have your letter of the 23d instant, with inclosures, requesting a reconsideration of so much of my decision of March 23, 1915 (72 MS. Comp. Dec., 1463), as held that the joint resolution of March 4, 1915 (38 Stat., 1228), authorized you to withdraw from the Treasury of the United States, at your discretion, the sum of $160,000, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section 7 of the act of January 14, 1889, and to use the same during the fiscal year 1916 for the purpose of promoting civilization and self-support among said Indians.

You state, in effect, that this request for a reconsideration is made because of the arguments, allegations, etc., contained in a letter from Mr. Webster Ballinger to the Commissioner of Indian Affairs, dated June 28, 1915, and in a petition signed by John G. Morrison, jr., and Paul H. Beaulieu as president and secretary, respectively, of the general council of the Chippewa Indians.

Mr. Ballinger's letter sets forth, in brief, the contention of the Indians, and the grounds therefor, as follows:

> Under date of March 23, 1915, the Comptroller rendered an advisory opinion, holding in substance that the department was authorized to expend an additional sum of $160,000 out of the principal sum in the Treasury of the United States standing to the credit of the Minnesota Chippewas.
>
> The Minnesota Chippewas are dissatisfied with the ruling contained in the Comptroller's advisory opinion and insist that the expenditure of $160,000 during the fiscal year commencing July 1, 1915, out of their principal sum is unauthorized by law. They insist that the joint resolution approved March 4, 1915, *supra*, continued only the appropriations contained in the act of August 1, 1914, which related to "the current and contingent expenses of the Bureau of Indian Affairs and for fulfilling treaty stipulations with various Indian tribes," and that by the proviso thereto it was expressly declared:
>
> "That this joint resolution shall not be construed as providing for or authorizing the duplication of any special payment or for the execution of any purpose provided for in said appropriation act *that was intended to be paid only once or done solely on account of the fiscal year nineteen hundred and fifteen.*"
>
> The provision contained in the act of August 1, 1914, shows on its face that it was intended to be paid only once and was author-

> ized to be expended only during the fiscal year ending June 30, 1915, and that it was not authorized to defray contingent expenses of the Indian Bureau or in fulfillment of any treaty stipulations with the Chippewa Indians of Minnesota. The Chippewa Indians of Minnesota, therefore, insist that the Comptroller's advisory opinion contains clear error prejudicial to their interests, and that said $160,000 can not lawfully be expended during the fiscal year commencing July 1, 1915.

Before proceeding further in the discussion of this matter, I will state for the information of Mr. Ballinger that the decision of March 23, 1915, referred to by him as an "advisory opinion," was rendered n accordance with the provision of section 8 of the act of July 31, 1894 (28 Stat., 208), which reads:

> Disbursing officers, or the head of any executive department, * * * may apply for, and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.

That the Indian appropriation act for the fiscal year 1915 (38 Stat., 582, 590–591) appropriated from the principal fund of Chippewa Indians in Minnesota the sum of $160,000 to be used for the purpose of promoting civilization and self-support among said Indians, and that the making of said appropriation

was within the power and jurisdiction of Congress is admitted by the representatives of these Indians, their only contention being that the joint resolution, *supra*, did not repeat or continue that appropriation for the fiscal year 1916.

The resolution in question, including title, is as follows:

> Joint resolution making appropriations for current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and sixteen.
>
> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That all appropriations for the current and contingent expenses of the Bureau of Indian Affairs, and for fulfilling treaty stipulations with various Indian tribes which shall remain unprovided for on June thirtieth, nineteen hundred and fifteen, are continued and made available for and during the fiscal year nineteen hundred and sixteen to the same extent, in detail, and under the same conditions, restrictions, and limitations for the fiscal year nineteen hundred and sixteen as the same were provided for on account of the fiscal year nineteen hundred and fifteen in the Indian appropriation act for that fiscal year. For all of such purposes a sufficient sum is appropriated, out of any money in the Treasury not otherwise appropriated, or out of funds to the credit of Indians as the

same were respectively provided in the Indian appropriation act for the fiscal year nineteen hundred and fifteen: *Provided*, That the appropriations from the Treasury of the United States or from Indian funds shall not exceed in the aggregate the amounts of such appropriations for the fiscal year nineteen hundred and fifteen: *Provided further*, That this joint resolution shall not be construed as providing for or authorizing the duplication of any special payment or for the execution of any purpose provided for in said appropriation act that was intended to be paid only once or done solely on account of the fiscal year nineteen hundred and fifteen: *Provided further*, That appropriations continued hereunder shall be available for the maintenance, repair, and operation of motor-propelled and horse-drawn passenger-carrying vehicles in the same manner as appropriations were available for these purposes during the fiscal year nineteen hundred and fifteen.

Approved, March 4, 1915.

This joint resolution is remedial in that it was enacted to relieve an emergency situation arising from the failure of the regular Indian appropriation bill to become a law. Therefore, it must be given a liberal construction—that is to say, such a construction as will give the full measure of relief intended by Congress.

While under a strict technical construction it might be said that the promotion of civilization and self-support among these Indians is neither a current

or contingent expense of the Bureau of Indian Affairs nor a fulfillment of treaty stipulations, I do not think it was the intent or purpose of the resolution to so limit the appropriations made thereunder. The title of the resolution defines its scope as equally as broad as that of the regular annual appropriation act. And I think it was the intention of Congress to provide, by this joint resolution, for the continuation during the fiscal year 1916 of all operations of the Bureau of Indian Affairs that were provided for in the Indian appropriation act for the fiscal year 1915, except such as, by their nature, were clearly intended to be completed during said fiscal year. The promotion of civilization and self-support is necessarily a continuing operation; and the act under which this fund was created (25 Stat., 642, 645) expressly provides:

> That Congress may, in its discretion, from time to time during the said period of fifty years, appropriate for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof.

Prior to 1912 this was done by appropriating the money from the General Treasury and providing for reimbursement from this "principal fund," but for the fiscal years 1912 to 1915, inclusive, each annual Indian appropriation act has made an appropriation for this purpose direct from said principal fund. The annual repetition is in itself of weight. As a further indication that Congress did not regard this item as

coming within the proviso quoted by Mr. Ballinger, *supra*, it may be mentioned that an appropriation for this purpose ($185,000) was in the Indian appropriation bill for the fiscal year 1916 as it was agreed to by the conferees, and it was not one of the disputed points which caused the failure of the bill.

After carefully considering all the arguments, etc., submitted by Mr. Ballinger and the officers of the general council, I am still of opinion that my former decision on this matter is a correct interpretation of the will of Congress as expressed in the joint resolution, and said decision must therefore be adhered to.

APPENDIX B.

THE SECRETARY OF THE INTERIOR.

WASHINGTON, *November 14, 1917.*

The honorable the ATTORNEY GENERAL.

SIR: In response to your inquiry regarding the trust funds of the Chippewa Indians of Minnesota arising under section 7 of the act approved January 14, 1889 (25 Stat. 645), and held in the United States Treasury, I have the honor to inform you that it appears from the official records of the Department of the Interior as follows:

There were in 1915 Chippewa Indians in Minnesota living to the number of 11,587. The principal of the trust fund, above mentioned, was on July 1, 1915, $6,108,399.64. The accrued interest on this principal fund at 5 per cent subject to withdrawal on July 1, 1915, was $275,493.26. Of this sum, $229,316.60 was subject to per capita distribution according to the act of January 14, 1889, *supra*, and $46,176.65 was available for free schools. Of the $229,316.60 set aside for per capita distribution, $214,359.50 was available, and this latter sum divided among the Indians per capita would amount to $18.50 to each recipient.

Respectfully,

FRANKLIN K. LANE.

O

INDEX

PAGE

STATEMENT OF THE CASE 1-7
The Bill 1-3
The Rule and Answer thereto 4-5
The Motion to Dismiss 5
The Decree of the Trial Court 6
The Appeal of the Court of Appeals 6
The Appeal to this Court 6-7

ARGUMENT 7-33

1. The Fallacious Ruling of the Comptroller and Trial Judge upon which Appellants Rely 7-9

   (a) The Joint Resolution, Not the Bill that Failed of Passage, Governs the Case 8-9

2. Additional Grounds Urged in Support of the Appeal 9-11

   (a) The Act of 1889 Creating the Fund and Limiting its Use 11-14

   (b) The Explanation and Construction by the United States Commissioners which Induced the Indians to Ratify the Act of 1889 and to Consent to Cessions and Allotments Therein Provided for 14-15

   (c) Every Indian Appropriation Bill Has Contained Appropriations Out of the Public Funds to Defray the Expenses for which Appellants Claim the $160,000 was Necessary 16-21

   (d) Not a Dollar of the Trust Funds Could Ever Have Been Lawfully Used for the Expenses of Administration at the Several Chippewa Indian Agencies 21-24

   (e) No Attempt by Congress to Authorize Use of Principal Trust Fund to Defray Administrative Expenses on Reservations 24-29

3. No Authority Contained in the Joint Resolution for the Expenditure of a Single Dollar of the Principal Trust Fund.....29-32

(a) All Members of the Tribe Have Assured Incomes Sufficient for Their Support and Civilization 32-34

RECAPITULATION 34

CONCLUSION 35

CASES CITED.

Choctaw Nation v. United States, 119 U. S., 1, 28.....23
Cornell v. Coyne, 192 U. S., 418, 420.....7, 8, 32
Dunwoody v. United States, 22 Ct. Claims, 269, 280....31
Johnson v. Gearlds, 234 U. S., 422, 443.....33
Minnesota v. Hitchcock, 185 U. S., at 394-5-6.....23, 24
Reeside v. Walker, 11 How., 272, 291.....10
Sheldon v. Purdy, 17 Wash., 135.....31
Taylor v. Davis, 110 U. S., 330, 338.....31
United States v. Mille Lac Chippewas, 229 U. S., 458 .....24, 30
Worcester v. Georgia, 6 Pet., 515, 582.....23

CONSTITUTION.

Article 1, section 9, paragraph 7 (1 Stat., 15).....10

STATUTES.

14 Stat., 280 (Act July 26, 1866, U. S. R. S., Sec 2097) 26, 27
16 Stat., 1566 (Act Mar. 3, 1871, U. S. R. S., Sec. 2079) 30
25 Stat., 217, 218, 220, 230, 235 (Act June 29, 1888)...16
25 Stat., 642 (Act Jan. 14, 1889).....
.....2, 6, 7, 8, 11, 12, 21, 22, 24, 25, 26, 28, 30, 31, 32
25 Stat. 980, 995, 983, 989 (Act Mar. 2, 1889).....17

26 Stat., 336, 337, 339, 351 (Act Aug. 19, 1890)....
.....18, 24, 25, 27
26 Stat., 989, 990, 992, 1004 (Act Mar. 3, 1891).....18
27 Stat., 120, 122, 123, 134, 138 (Act July 13, 1892)..
.....18, 27
27 Stat., 612, 613, 615, 627, 632 (Act Mar. 3, 1893).18, 27
28 Stat., 286, 288, 289, 290, 302 (Act Aug. 15, 1894).
.....18, 27
28 Stat., 876, 878, 880, 881, 891 (Act Mar. 2, 1895)..
.....18, 27
29 Stat., 321, 326, 331, 333, 335, 336 (Act June 10, 1896) 18, 27
30 Stat., 62, 64, 66, 67, 77 (Act June 7, 1897).....18, 27
30 Stat., 571, 573, 575, 576, 584, 585 (Act July 1, 1898) 18, 27
30 Stat., 924, 925, 926, 928, 937 (Act Mar. 1, 1899)..
.....18, 27
31 Stat., 221, 222, 223, 226 (Act May 31, 1900)...19, 27
31 Stat., 1058, 1063 (Act Mar. 3, 1901).....19, 27
32 Stat., 245, 246, 247, 249 (Act May 27, 1902).18, 19, 27
32 Stat., at 560 (Act July 1, 1902).....9, 10
32 Stat., 982, 986 (Act Mar. 3, 1903).....19, 27
33 Stat., 189, 193 (Act Apr. 21, 1904).....19, 27
33 Stat., 1048, 1051 (Act Mar. 3, 1905).....19, 27
34 Stat., 325, 350 (Act June 21, 1906).....19, 27
34 Stat., 1015, 1033, 1034 (Act Mar. 1, 1907)...19, 27, 32
35 Stat., 70, 83 (Act Apr. 30, 1908).....19, 27
35 Stat., 781, 794 (Act Mar. 3, 1909).....19, 27
36 Stat., 269, 271, 276 (Act Apr. 4, 1910).....20, 27
36 Stat., 1058, 1065 (Act Mar. 5, 1911).....20, 28
37 Stat., 518, 525 (Act Aug. 24, 1912).....20, 28
38 Stat., 77, 88 (Act June 30, 1913).....20, 28
38 Stat., 580, 582, 590 (Act Aug. 1, 1914).....
.....2, 6, 7, 20, 28, 29, 30, 31

RESOLUTION.

Joint Resolution, March 4, 1915 (38 Stat., 1228)....
.....3, 4, 7, 8, 9, 29, 30

PAGE

HOUSE BILL.

H. R. 20150, 63d Cong., 3d Ses.....4

HOUSE EXECUTIVE DOCUMENT.

No. 247, 51st Cong., 1st Ses., pp. 34, 38, 43, 46, 49, 56, 59, 61, 63, 67, 68, 164.....14, 15, 22, 23

ANNUAL REPORT OF THE

Secretary of the Interior dated Sept. 30, 1899, p. 35....18

In the
Supreme Court of the United States

OCTOBER TERM, 1917.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR; CATO SELLS, COMMISSIONER OF INDIAN AFFAIRS; AND JOHN BURKE, TREASURER OF THE UNITED STATES, appellants,

vs.

JOHN G. MORRISON, JR., FOR AND ON BEHALF of himself and all other members of the Chippewa Tribe of Indians in Minnesota, similarly situated, appellees.

} No. 169.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APPELLEES' BRIEF.

Appellees' Statement of the Case.

The Bill.

John G. Morrison, Jr., a duly enrolled, allotted and recognized member of the Chippewa Tribe of Indians of Minnesota, for himself and for and on behalf of all other members of said tribe similarly situated, filed a bill in equity in the Supreme Court of the District of Columbia on September

17, 1915, to enjoin the Secretary of the Interior and the Commissioner of Indian Affairs from withdrawing from the Treasury of the United States during the fiscal year ending June 30, 1916, the sum of $160,000 of the trust funds of the Chippewa Indians of Minnesota and expending the same for their alleged support and civilization during that year, and enjoining the Treasurer of the United States from honoring or paying any warrant or check so drawn on said principal fund. The bill set forth (R., 2, 3) that the trust fund had been derived from the sale of lands ceded to the United States under the provisions of the act of January 14, 1889 (25 Stat., 642), and that appellees consented to the cessions and ratified said act in the belief that all its terms and provisions would be carried out in good faith. The pertinent provisions of section 7 of said act of 1889 providing for the disposition of the funds were set out (R., 2-3). It is then alleged (R., 3, 4) that the Indian appropriation bill approved August 1, 1914 (38 Stat., 580, 590), making appropriations for the fiscal year ending June 30, 1915, authorized the Secretary of the Interior to withdraw from the Treasury of the United States, at his discretion, the sum of $205,000, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section 7 of the act of January 14, 1889, and to use the same for the purpose "of promoting civilization and self-support among the said Indians in manner and for purposes provided for in said act: The Secretary was authorized to use not to exceed $40,000 of said amount in the purchase of land for homeless non-removal Mille Lac Indians, which was made immediately available and was to remain available until expended, and not to exceed $5,000 of said amount in the removal of Chippewa Indian bodies from burial grounds in the vicinity of Wisconsin Point, Wis., and their reinter-

ment in an established cemetery in the city of Superior. Appellees set forth that said appropriation was made for three special purposes therein expressly stated and that the expenditure of said money was expressly limited to the fiscal year ending June 30, 1915, except the item of $40,000. It is then set forth (R., 4, 5) that the annual Indian Appropriation Bill, making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulation with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1916, failed of passage by Congress, and that in lieu thereof a joint resolution was passed and by the President approved March 4, 1915. The resolution is set out in full (R., 4, 5). It is then alleged that no part of the $205,000 appropriated by the act of August 1, 1914, was reappropriated by said joint resolution; that the appropriation of $205,000 contained in the act of August 1, 1914, was a special appropriation for specific purposes, the expenditure thereof, excepting the $40,000 item, not involved in this suit, being limited exclusively to the fiscal year ending June 30, 1915, and was not intended as a regular annual appropriation, but was intended to be made only once and solely on account of the fiscal year ending June 30, 1915, and that said joint resolution in express language excluded all such appropriations contained in the act of August 1, 1914, from being re-expended during the fiscal year ending June 30, 1916, but that, notwithstanding the plain language of the statute, appellants, upon the advice of the Comptroller of the Treasury, were preparing to expend during the fiscal year ending June 30, 1916, $160,000 of tne trust funds on deposit in the Treasury of the United States, without authority of law, and that appellants would do so unless enjoined, to the great, lasting and irreparable injury of appellees. The relief prayed was that appellants should be enjoined from expending $160,000, or any part thereof, of said trust funds.

The Rule and Answer Thereto.

A rule was issued and served upon appellants, requiring them to show cause why they should not be enjoined in conformity with the prayers of the bill. The Secretary of the Interior and the Commissioner of Indian Affairs, appellants here, filed a joint answer to the rule only (R., 6-9), in which they set forth: That for the fiscal years from 1891 to 1911, inclusive, appropriations for the relief and civilization of the Chippewa Indians of Minnesota had been annually made by Congress, reimbursable out of principal funds that might be deposited in the Treasury to the credit of the Indians; that from 1911 to 1914, inclusive, Congress made similar appropriations for the relief and civilization of the Chippewa Indians, payable directly from tribal funds; that in the Indian Appropriation Bill for 1916, officially known as "H. R. 20150, 63d Congress, 3d session," an authorization similar to that contained in the appropriation bills for the fiscal years 1912 to 1915, inclusive, was inserted; that as said Indian Appropriation Bill for the fiscal year ending June 30, 1916, failed to pass, Congress, by joint resolution, dated March 4, 1915, continued and made available for the fiscal year ending June 30, 1916, the same appropriations authorized by law for the current and contingent expenses of the Indians during the fiscal year 1915; that the appropriations in the various appropriation bills from 1891 to 1915, above mentioned, had been relied upon annually for the expenses of the administration at the several Chippewa agencies and for the direct benefit of said Indians, the amount spent out of the funds of the Chippewa Indians of Minnesota for the fiscal year ending June 30, 1915, having been $152,312.31; that the Secretary of the Interior received an opinion from the Comptroller of the Treasury on March 23, 1915, to the effect that by reason of the joint

resolution the Secretary of the Interior was authorized to withdraw and expend from the principal fund of the Chippewa Indians not exceeding $160,000; and that on reconsideration of this opinion and after full argument by the attorney for the general council of the Chippewa Indians of Minnesota, the Comptroller of the Treasury, on July 31, 1915, adhered to his decision. The Secretary of the Interior and the Commissioner of Indian Affairs further set forth that they had entered into contracts and created obligations for the fiscal year 1916 to an amount aggregating $159,365.60, of which amount $32,649.41 had been actually paid out and advanced by the Treasury to the various disbursing agents for authorized expenditures; they set forth that as there were no other funds available for the payment of the necessary expenses paid and contracted for, unless the said sum of $160,000 was available, then all the Chippewa agencies and the other activities for the benefit of the Indians must be abandoned; said expenses embracing subsistence supplies, clothing, forage, fuel, medical supplies, etc.

The Motion to Dismiss.

Simultaneously with the filing of the answer to the rule the Secretary of the Interior and the Commissioner of Indian Affairs filed a motion to dismiss the bill (R., 9, 10), on the ground that the matters sought to be controlled presented questions exclusively within the jurisdiction of the Comptroller of the Treasury, and that the decision of the Comptroller to the effect that appellants might lawfully expend the money was not reviewable by any court; also that the matter sought to be enjoined did not involve any irreparable injury or any grounds for interference by a court of equity, inasmuch as the funds sought to be expended were for the use and benefit of the Chippewa Indians of Minnesota.

The Decree of the Trial Court.

Upon hearing on the answer to the rule and the motion to dismiss, and after allowing certain amendments to the bill to be filed (R., 11), the court rendered an opinion (R., 13, 14) holding that the rule should be discharged and the motion to dismiss the bill sustained. A decree (R., 10, 11) was thereafter entered in accordance with the opinion.

The Appeal to the Court of Appeals.

From said decree appellees prosecuted an appeal to the Court of Appeals of the District of Columbia. That court, by an opinion filed February 23, 1916 (R., 15-17), reversed the decree of the trial court and remanded the case, with instructions to grant the injunctive relief prayed in the bill.

The Appeal to This Court.

From the decree of the Court of Appeals appellants prosecuted an appeal to this court under paragraphs 5 and 6 of section 260 of the Judicial Code, assigning eleven grounds of alleged reversable error (R., 19, 20). Counsel for appellants (Brf., pp. 9-10) has reduced the eleven assignments of error to one question, which is now presented for decision. This question, correctly stated, is:

WAS THE PROVISION CONTAINED IN THE ACT OF AUGUST 1, 1914, AUTHORIZING THE SECRETARY OF THE INTERIOR, AT HIS DISCRETION, TO WITHDRAW FROM THE TREASURY OF THE UNITED STATES $205,000 OF THE PRINCIPAL SUM ON DEPOSIT TO THE CREDIT OF THE CHIPPEWA INDIANS OF THE STATE OF MINNESOTA, ARISING UNDER SECTION 7 OF THE ACT OF JANUARY 14, 1889, AND TO USE $160,000 THEREOF

DURING THE FISCAL YEAR ENDING JUNE 30, 1915, FOR THE PURPOSE OF PROMOTING CIVILIZATION AND SELF-SUPPORT AMONG SAID INDIANS IN MANNER AND FOR PURPOSES PROVIDED FOR IN THE ACT OF 1889, RE-ENACTED BY THE JOINT RESOLUTION APPROVED MARCH 4, 1915, AND MADE AVAILABLE DURING THE FISCAL YEAR ENDING JUNE 30, 1916?

Argument.

1. THE FALLACIOUS RULING OF THE COMPTROLLER AND TRIAL JUDGE UPON WHICH APPELLANTS RELY.

The Comptroller of the Treasury (Appellants' Brf., pp. 38-9) and the trial judge (R., 13, 14) both conceded that "under a strict technical construction" the authority conferred upon the Secretary by the act of August 1, 1914, was not again conferred by the joint resolution of March 4, 1915, but held that "as the title of the resolution defines its scope as equally as broad as that of the regular appropriation act," it was reasonable to infer that Congress intended "to provide for the continuation during the fiscal year 1916 of all operations of the Bureau of Indian Affairs that were provided for in the Indian Appropriation Act for the fiscal year 1915, except such as by their nature were clearly intended to be completed during said fiscal year. The promotion of civilization and self-support is necessarily a continuing operation."

This ruling, upon which the decisions of the Comptroller and the trial judge are based, is in disregard of the established rule of construction. This court, in Cornell vs. Coyne, 192 U. S., 418 at 420, said:

> "'The title is no part of an act and can not enlarge or confer powers or control the words of the

> act unless they are doubtful or ambiguous.' United States vs. Fisher, 2 Cranch., 358, 382; Yazoo and Miss. Valley R. Co. vs. Thomas, 132 U. S., 174, 188. 'The ambiguity must be in the context and not in the title to render the latter of any avail.' United States vs. Oregon and C. R. Co., 164 U. S., 526, 541. See also Price vs. Forrest, 173 U. S., 410, 427."

There is no ambiguity in the context of the joint resolution. The language used is clear and specific. It provides:

> "That all appropriations for the current and contingent expenses of the Bureau of Indian Affairs and for fulfilling treaty stipulations with various Indian tribes which shall remain unprovided for on June thirtieth, nineteen hundred and fifteen, are continued and made available for and during the fiscal year nineteen hundred and sixteen to the same extent, in detail, and under the same conditions, restrictions, and limitations for the fiscal year nineteen hundred and sixteen as the same were provided for on account of the fiscal year nineteen hundred and fifteen in the Indian Appropriation Act for that fiscal year."

(a) *The Joint Resolution, Not the Bill that Failed of Passage, Governs the Case.*

Counsel for appellants (appellants' brf., pp. 10-14, 24-5) lays great stress upon the fact that the Indian Appropriation Bill that failed of passage in 1915, which necessitated the passage of the joint resolution, contained an item authorizing the Secretary, in his discretion, to withdraw $185,000, or so much thereof as may be necessary, of the principal fund arising under section 7 of the act of 1889, "and to use the same for the purpose of promoting civilization and self-support among the said Indians in manner and for purposes provided for in said act." It is contended that because such

a provision was in the bill that failed of enactment into law it is clear than Congress intended to appropriate this money, particularly as it does not appear that there was any objection to this appropriation. The proposition thus presented is devoid of merit. That bill contained many items in addition to the one in question that were not for the "current and contingent expenses of the Bureau of Indian Affairs" or "for fulfilling treaty stipulations." Under the theory thus advanced by counsel all of said items were appropriated by Congress notwithstanding the bill failed of enactment into law and notwithstanding they were not embraced within the scope of the joint resolution. The joint resolution can alone be considered. The mere fact that the bill failed of enactment into law disposes of the contention of counsel, particularly in view of the inhibition contained in the act of July 1, 1902 (32 Stat., at 560), hereinafter set out.

2. Additional Grounds Urged in Support of the Appeal.

In order to escape the application of established rules of construction in the interpretation of the joint resolution, appellants in their answer to the rule set up as a defense: (a) The necessity for the use of the funds; and (b) long-continued usage; and counsel for appellants has attempted to bolster up this defense by a review of the act of 1889 and provisions contained in the Indian Appropriation Bills commencing with the year 1891 and ending with the year 1914. The question to be determined is not whether the trust funds of the Indians have heretofore been lawfully appropriated and lawfully expended, but whether the Secretary was authorized by the joint resolution of March 4, 1915, to withdraw and expend a single dollar of the trust fund

belonging to the Indians, and if so how much? What Congress should have done does not enter into the case, and appellants are not at liberty to use the trust funds because in their opinion Congress should have made the appropriation. In U. S. vs. Goldenburg (168 U. S., at 103) this court said:

> "No mere omission, no mere failure to provide for contingencies which it may seem wise to have specifically provided for justify any judicial addition to the language of the statute."

Long-continued use of the funds for the purpose for which appellants claim the $160,000 was inferentially appropriated by the joint resolution, does not help their case. The appropriation must have been authorized by the joint resolution "in specific terms." By the act of July 1, 1902 (32 Stat., at 560), it is provided:

> "Hereafter no act of Congress shall be construed to make an appropriation out of the Treasury of the United States, unless such act shall, in specific terms, declare an appropriation to be made for the purpose or purposes specified in the act."

In Reeside vs. Walker (11 How., 272, 291), decided long before the above enactment, this court said:

> "It is a well-known constitutional provision that no money can be taken or drawn from the Treasury except under an appropriation by Congress. (See Constitution, Art. 1, sec. 9; 1 Stat. at Large, 15.)"
>
> "However much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of anything not thus previously sanctioned. Any other course would give to the fiscal officers a most dangerous discretion."

A review of the acts of Congress referred to in appellants' brief discloses (a) that from 1889 to 1915 appropriations were made out of the public funds in the Treasury to defray the very expenses for which appellants claim it is necessary to use the trust funds; (b) that during said entire period Congress has never authorized the use of a single dollar of the trust funds for the purposes for which appellants say they have been previously, and are to be, used; and (c) that if appellants have made the use of the funds in the past they say they have, the money was illegally and unlawfully expended.

(a) *The Act of* 1889 *Creating the Fund and Limiting Its Use.*

Prior to the act of January 14, 1889, the United States had dealt with the nine or more bands of Chippewa Indians occupying reservations in the State of Minnesota separately. The object and purpose of the act of 1889 was to bring all the various bands or tribes together and deal with them as one tribe, to compose the differences existing between said bands over the ownership of the land to be ceded and to be allotted, the differences existing between the various bands and the United States relating thereto, and to dismember the tribe and distribute the tribal property among the individual members and their issue share and share alike. To effectuate this purpose the assent of two-thirds of all the male adults of all the bands to the cessions and allotments of the lands provided for in the act of 1889 was deemed by Congress necessary. In effectuating these objects Congress dealt with the Indians by agreement, recognizing thereby their interest in or ownership of the lands to be ceded and to be allotted, and thus attached to the fund derived from the sale of the lands and timber a specific

trust to be executed in strict conformity with the terms and conditions expressly set out in the act of 1889, *supra* (U. S. vs. Mille Lac Indians, 229 U. S., 498, 509-10; Minnesota vs. Hitchcock, 185 U. S., 373, 394-5).

Accordingly, by the act of January 14, 1889 (25 Stat., 642), provision was made in section 1 for the appointment of a commission "to negotiate with all the different bands or tribes of Chippewa Indians for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as, in the judgment of said commission, is not required to make and fill the allotments required by this and existing acts, and shall have been reserved by the commissioners for said purposes, for the purposes and upon the terms hereinafter stated." Provision was made for the taking of a census and the classification of the Indians, so as to enable the commission to make the allotments and payments therein provided for and to determine whether the requisite number of each band assented to the cessions and ratified the act. Section 3 provided for the removal of certain Indians and allotments of land to all. Sections 4, 5 and 6 provided for the survey and disposition of the ceded lands and timber. Section 7 provided as follows:

> "That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per

annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use, and one-fourth of said interest shall, during the same period and with like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares: *Provided, That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof.* The United States shall, for the benefit of said Indians, advance to them as such interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act shall have been made, until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the sum of three million dollars, less any actual interest that may in the meantime accrue from accumulations of said permanent fund; the payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years, be expended in procuring

> live stock, teams, farming implements, and seed for such of the Indians to the extent of their shares as are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars the United States shall be fully reimbursed out of such excess, for all the advances of interest made as herein contemplated and other expenses hereunder."

The eighth section appropriated $150,000, or so much thereof as may be necessary out of any money in the Treasury not otherwise appropriated to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removals and allotments and the first annual payment of $00,000 interest.

(*b*) *The Explanation and Construction by the United States Commissioners Which Induced the Indians to Ratify the Act of* 1889 *and to Consent to Cessions and Allotments Therein Provided for.*

Pursuant to the authority contained in the act of 1889, Henry M. Rice, Martain Marty, and Joseph B. Whiting were appointed commissioners. The commissioners visited each reservation, explained the objects and purposes of the United States and the meaning and purpose of the various provisions of the act of 1889, the entire record appearing in H. R. Ex. Doc. 247, 51st Cong., 1st ses. In explanation of the provisions of section 7 of said act, the commission, speaking through Commissioner Rice, at the first council held at White Earth, July 17, 1889 (Id., p. 88), informed the Indians as follows:

> "It provides that all money received from the sale shall be placed in the Treasury and shall bear interest at 5 per cent, which shall be paid to you

annually. Three-fourths of this interest is to be paid to you in money and one-fourth is to be devoted exclusively to the establishment of free schools. *The amount of interest of course increases as the sales of your lands increase.*"

"At the end of fifty years the principal is to be divided equally among those who shall then be living. *To provide for the breaking of land, building of houses, purchasing of cattle and horses, and everything of that kind that you may need for your advancement there is a clause providing that Congress may, in its discretion, from time to time during the said fifty years, appropriate for the purpose of promoting civilization and self-support among the Indians a portion of said principal sum, not exceeding 5 per cent thereof. In case of the failure of crops or any unforeseen misfortune, here is a storehouse of money to be drawn upon for your wants.*"

In the official records of the negotiations and cessions (Id., p. 164) this appears:

"The commission further explained that what was said at White Earth had been repeated to all the bands and was now repeated here."

The agreements of cession (Id., 38) recite that—

"after such explanation and understanding"

the Indians consent to the cession—

"for the purposes and upon the terms stated in said act."

The cessions were separately and duly approved by President Harrison (Id., 34, 43, 46, 49, 56, 59, 61, 63, 67).

(c) *Every Indian Appropriation Bill Has Contained Appropriations Out of the Public Funds to Defray the Expenses for Which Appellants Claim the* $160,000 *Was Necessary.*

In their joint answer to the rule (R., 8) appellants Lane and Sells state:

> "They further say that there are no other funds available for the payment of the necessary expenses paid and contracted as above set forth and that unless said sum of $160,000 is available as decided by said Comptroller, *all the Chippewa agencies*, with the various activities that have heretofore and are now being conducted for the benefit of said Indians, must be abandoned; that said expenses embrace subsistence supplies, clothing, forage, fuel, educational supplies, medical supplies, etc."

Thus the bold statement is made in the answer to the Rule that unless $160,000 of the principal trust funds of the Chippewa Indians could be expended during the fiscal year ending June 30, 1916, the entire Indian service, so far as it related to the Chippewa Indians of Minnesota, would have to be abandoned, as there were no other funds out of which the expenses of defraying all the costs of administering the general laws of Congress applicable to the Chippewa Reservations in Minnesota could be paid and that the trust funds of these Indians were to be used in paying the salaries and all expenses of the regular employees of the Bureau of Indian Affairs engaged in administering the general laws of Congress on the reservation.

A complete refutation of the above asserted defense is found in the laws of Congress. The Indian appropriation bill approved June 29, 1888 (25 Stat., 217), like previous Indian appropriation bills, carried the following specific appropriations for the Chippewas of Minnesota.

> At page 218, "For pay of 58 agents of Indian Affairs at the following-named agencies, at the rate respectively indicated: * * * At the White Earth Agency at $1,600."
>
> At page 230, "For support and civilization of Chippewas of Red Lake and Pembina tribes of Chippewas, and for pay of employees, ten thousand dollars."
>
> At page 230, "Support of Chippewas on White Earth Reservation: * * * Ten thousand dollars."
>
> At page 220, "For the support of a school or schools upon said reservation, during the pleasure of the President, in accordance with third article of the treaty of March nineteenth, eighteen hundred and sixty-seven (vol. 16, p. 720), four thousand dollars."

This bill also carried numerous large lump-sum appropriations, of which the following, appearing at page 235, is a sample:

> At page 235, "For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, six hundred and eighty-five thousand dollars. * * *"

The Indian Appropriation Bill approved March 2, 1889 (25 Stat., 980, 995, 983, 999) contained identical items, and in addition thereto (Id., 997) $50,000 to employ practical farmers at the various agencies to instruct the Indians in agriculture. This bill, like the preceding and succeeding bills, also carried many large lump-sum appropriations for the support of the various divisions of the Indian service on all the reservations, which included the Chippewa reservations.

The same specific appropriations for the support of the Indian service among the Chippewas of Minnesota were

carried in each of the following Indian Appropriation Bills, which also carried large lump-sum appropriations for the support of the Indian service on all the Indian reservations

Act approved August 19, 1890 (26 Stat., 336, 337, 339, 351).

Act approved March 3, 1891 (26 Stat., 989, 990, 992, 1004).

Act approved July 13, 1892 (27 Stat., 120, 122, 123, 134).

Act approved March 3, 1893 (27 Stat., 612, 613, 615, 627).

Act approved August 15, 1894 (28 Stat., 286, 288, 289, 302).

Act approved March 2, 1895 (28 Stat., 876, 878, 880, 891).

Act approved June 10, 1896 (29 Stat., 331, 333, 335, 336).

Act approved June 7, 1897 (30 Stat., 62, 64, 66, 77).

Act approved July 1, 1898 (30 Stat., 571, 573, 575, 584-5).

Act approved March 1, 1899 (30 Stat., 924, 925, 926, 928, 937).

(This last year an agency at Leech Lake was created, and the salary of the agent fixed at $1,800 a year, for which an appropriation was made out of the public funds, id., 925.)

Under date of August 17, 1899, the Secretary of the Interior directed that the work of the Chippewa Commission appointed under the act of January 14, 1889, be closed within sixty days after notice. September 12, 1899, receipt of notice was acknowledged (Annual Rept. of Sec. of Int., Sept. 30, 1899, p. 35), and by the act of June 27, 1902 (32 Stat., at 404), the Secretary was directed to proceed as speedily as practicable to complete the allotments to the Indians, which was made necessary by the abolishment of the commission.

The Indian Appropriation Bill approved May 31, 1900, did not contain the specific appropriations contained in the preceding bills of $10,00 each for the support and civilization of the Chippewas of Red Lake and Pembina tribes and for pay of employees and for the support of the Chippewas on the White Earth Reservation, and these two specific appropriations were omitted from all subsequent bills, but lump-sum appropriations appear in each of the bills for the maintenance of the service on the Chippewa and all other reservations. This act did contain specific appropriations for the pay of the agents at Leech Lake Agency and White Earth Agency (31 Stat., at 222-3), which, with the general lump-sum appropriations, were carried in the following succeeding bills:

Act approved March 3, 1901 (31 Stat., 1058).
Act approved May 27, 1902 (32 Stat., 245-6).
Act approved March 3, 1903 (32 Stat., 982).
Act approved April 21, 1904 (33 Stat., 189).
Act approved March 3, 1905 (33 Stat., 1048).
Act approved June 21, 1906 (34 Stat., 325).
Act approved March 1, 1907 (34 Stat., 1015).
Act approved April 30, 1908 (35 Stat., 70).
Act approved March 3, 1909 (35 Stat., 781).

The Indian Appropriation Bill approved May 27, 1902 (32 Stat., at 247), contained the following provision:

> "That the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may devolve the duties of any Indian agency or any part thereof upon the superintendent of the Indian training school located at such agency whenever in his judgment such superintendent can properly perform the duties of such agency. And the superintendent upon whom such duties devolve shall give bond as other Indian agents."

Under the authority contained in the above act the commissioner, with the approval of the Secretary, terminated the offices of agent at Leech Lake and White Earth and devolved all the duties pertaining to said agencies on the superintendents of the training schools, and thereafter no item appears in any bill for the pay of the salaries of Indian agents, or specifically for the pay of employees on the various Indian reservations, except in a few cases enumerated in the laws. The salaries of the superintendents of the training schools and the pay of all employees in the Indian service on the various reservations, except in a few instances enumerated in the laws, were provided for in the lump-sum appropriations, the lump sum appropriated in the act of April 4, 1910 (36 Stat., at 271), "for the support of Indian day and industrial schools, not otherwise provided for, and for other educational and industrial purposes in connection therewith" being $1,420,000. Similar large lump-sum appropriations are contained in every Indian Appropriation Bill subsequently enacted, as will appear from an examination of the following bills:

Act of March 3, 1911 (36 Stat., 1058).
Act of August 24, 1912 (37 Stat., 518).
Act of June 30, 1913 (38 Stat., 77).
Act of August 1, 1914 (38 Stat., 582).

Out of the large lump-sum appropriations contained in these bills have been paid all the salaries and expenses of the administration of the Bureau of Indian Affairs on all the other reservations throughout the country, except where specific appropriations are contained in the bills for a particular reservation, which occurs in a few instances. A part of the lump-sum appropriations have been annually expended for years in defraying the expenses on the Chippewa Reservations and under the law the entire expenses on the Chippewa Reservations other than the costs of administering

the act of 1889, which were to be deducted from the gross receipts and only the net proceeds placed in the trust fund in the Treasury could lawfully have been paid only out of the lump-sum appropriations made out of the public moneys. The maintenance of the Indian service on the Chippewa Reservations in Minnesota has been in pursuance of a policy of Congress for the enforcement of its laws relating to its Indian wards and their property and forms no part of the act of 1889 and the terms and conditions therein stated upon which the Indians consented to the cessions of their lands and the disposition of the proceeds.

Therefore, there is no merit in the claim of the appellants that unless $160,000 of the trust funds of the Chippewa Indians "is available * * * all the Chippewa agencies, with the various activities that have heretofore and are now being conducted for the benefit of said Indians, must be abandoned" during the fiscal year ending June 30, 1916.

(*d*) *Not a Dollar of the Trust Funds Could Ever Have Been Lawfully Used for the Expenses of Administration at the Several Chippewa Indian Agencies.*

In their answer to the Rule (R., 7) appellants Lane and Sells state that—

> "From 1891 to 1911, inclusive, appropriations for the relief and civilization of the Chippewa Indians of Minnesota were annually made by the Congress of the United States, such appropriations being made reimbursable, * * * and since the year 1911 Congress by legislation annually has authorized such expenditures, theretofore made as aforesaid, to be made directly from said tribal funds. * * * They further say that the appropriation and authorizations heretofore described *have been relied upon annually for the expenses of administration at the several Chippewa Indian agencies.* * * *"

Congress could not lawfully authorize the expenditure of a single dollar of the trust funds of the Chippewa Indians to defray the general administrative expenses at the several Chippewa Indian agencies. By the express provisions of section 7 of the act of 1889 the net proceeds from the sale of the lands ceded were to be placed in the Treasury of the United States to the credit of the Chippewa Indians *as a permanent fund*, which was to draw interest at the rate of 5 per centum per annum, payable annually for the period of fifty years, and at the expiration of fifty years the said permanent fund is to be divided and paid to all of the Chippewa Indians and their issue then living in cash in equal shares. The only authority under which Congress could touch the principal fund is found in the proviso, as follows:

> "Provided, That Congress may, in its discretion, *from time to time*, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof."

The commissioners who negotiated with the Indians for the cession of their lands construed, interpreted and explained this provision to all the Indians, and upon that construction, interpretation and explanation the Indians consented to the cessions and allotments. The commissioners told the Indians that the above provision (H. R. Ex. Doc. No. 247, 51st Cong., 1st ses., at pp. 88, 164) meant:

> *"In case of the failure of crops or any unforeseen misfortune here is a storehouse of money to be drawn upon for your wants."*

Thus, the Indians were assured by the commissioners that their principal fund would only be encroached upon by Con-

gress to meet special and unforeseen emergencies that might arise. The agreements of cession (Id., 38) recite that—

> "After such explanation and understanding"

the Indians consent to the cession—

> "for the purposes and upon the terms stated in the act."

In Minnesota vs. Hitchcock, 185 U. S., at 395-6, the rule governing the construction of this agreement and cession is stated. This court, quoting from Worcester vs. Georgia, 6 Pet., 515, 582, said:

> "'The language used in treaties with the Indians should never be construed to their prejudice. * * * How the words of the treaty were understood by this unlettered people, rather than their critical meanings, should form the rule of construction.'"
>
> "And in Choctaw Nation vs. United States, 119 U. S., 1, 28; 30 L. Ed., 306, 315:
>
> "'The recognized relation between the parties to this controversy, therefore, is that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes, on the other hand, such an interpretation of their acts and promises as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence, formulating the rights and obligations of private persons equally subject to the same laws.'"

The Court of Appeals, in deciding the case (R., 16), said:

> "In approaching a consideration of this question we must bear in mind that this fund is a part of a trust fund in the control of the United States to the credit of these Indians (Minnesota vs. Hitchcock, 185 U. S., 373, 394), and that the expenditure thereof must be in accordance with the provisions of the trust. United States vs. Mille Lac Chippewas, 229 U. S., 458."

There is no suggestion in the act of 1889 that any part of the trust funds would or could be used by the Government in paying the expenses of the regular force maintained on the reservation and which forms an integral part of the Bureau of Indian Affairs in the administration of the general laws of Congress. The commissioners assured the Indians that the funds would not be applied to such a purpose. For Congress to attempt to so use them would be an act of bad faith and beyond its power.

(c) *No Attempt by Congress to Authorize Use of Principal Trust Fund to Defray Administrative Expenses on Reservations.*

The act of January 14, 1889, section 8, appropriated $150,000 "to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removal and allotments and the first annual payment of interest" of $90,000.

The Indian Appropriation Bill approved August 19, 1890 (26 Stat., 336, 351), contained the following provision:

> *"To enable the Secretary of the Interior to carry out an act entitled 'An act for the relief and civiliza-*

tion of the Chippewa Indians in the State of Minnesota, and for other purposes,' approved January 14, 1889, *as follows:* For the purpose of erection of houses for Indians and saw and flour mills; agricultural implements, stock and seeds, breaking and fencing land; for payment of expenses of delegation of Chippewa Indians to visit the White Earth Reservation; for the erection and maintenance of day and industrial schools; and for subsistence and pay of employees, $100,000; and for surveys, appraisals, removals, and allotments, $100,000; in all $200,000, of which amount $7,500, or so much thereof as may be necessary, may be used for the employment of additional clerical force in the office of the surveyor-general of Minnesota, on account of such surveys; Provided, That the amounts shall be reimbursed to the United States from the proceeds of sales of land ceded by the Chippewa Indians under the act of January 14, 1889. And the Secretary of the Interior shall make a full and detailed report of his doings hereunder to the first session of the Fifty-second Congress."

Not a dollar of this money could have been or was lawfully appropriated under the proviso to section 7 of the act of 1889, as at that time not a dollar had been received from the sale of the lands or timber, and no money was received therefrom for years thereafter. The proviso to section 7 in express terms limited any appropriation by Congress "for the purpose of promoting civilization and self-support among said Indians" to not to exceed "five per centum" of the principal fund, and at that time there was no principal fund. No authorization can be found in the act of January 14, 1889, for an appropriation in 1890, to be reimbursed out of the trust funds for the "erection of houses for Indians, * * * agricultural implements, stock and seed, breaking and fencing of land." Section 7 of the act of 1889

expressly provided that such expenses incurred on behalf of individual Indians should be for the first five years paid out of the share of the interest fund to which such Indian was entitled, in these words:

> "The payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years be expended in procuring live stock, teams, farming implements, and seed for such of the Indians to the extent of their shares as are fit and desire to engage in farming, but as to the rest, in cash."

It will be observed that the provision appearing in the Indian appropriation bill approved August 19, 1890, *supra*, limited the expenditure of the $200,000 appropriated expressly to the purposes named, and not a dollar was authorized to be used for the pay of the salaries and expenses of the agents and agency employees engaged in the administration of the general laws of Congress relating to the Indians, for which specific appropriations were made in the same act at pages 336, 337, 339, 351. If a single dollar of this money was used by the appellants or their predecessors in office for the pay of the salaries and expenses of the agents and agency employees engaged in the administration of the general laws of Congress, as set out in their answer to the Rule (R., 7-8), it was in disregard of the provisions of the act of January 14, 1889, *supra*, of the provision contained in the Indian Appropriation Bill approved August 19, 1890, *supra*, and every succeeding Indian Appropriation Bill, and in violation of the express policy declared by Congress in the act of July 26, 1866, section 2097, U. S. R. S., in these words:

> "No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any

manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose, unless expressly authorized by law."

The Indian Appropriation Bill approved March 3, 1891 (26 Stat., 989), contained no appropriation made reimbursable out of the trust funds for the support and civilization of the Chippewa Indians of Minnesota. The following Indian Appropriation Bills contained items in substantially, if not the identical language, appearing in the Indian Appropriation Bill approved August 19, 1890, *supra*, at the pages indicated, varying only in amounts appropriated:

Act of July 13, 1892 (27 Stat., 120, at 138).
Act of March 3, 1893 (27 Stat., 612, at 632).
Act of August 15, 1894(28 Stat., 286, at 289-90).
Act of March 2, 1895 (28 Stat., 876, at 880-1).
Act of June 10, 1896 (29 Stat., 321, at 326).
Act of June 7, 1897 (30 Stat., 62, at 67).
Act of July 1, 1898 (30 Stat., 571, at 575-6).
Act of March 1, 1899 (30 Stat., 924, at 928).
Act of May 31, 1900 (31 Stat., 221, at 226).
Act of March 3, 1901 (31 Stat., 1058, at 1063).
Act of May 27, 1902 (32 Stat., 245, at 249).
Act of March 3, 1903 (32 Stat., 982, at 986).
Act of April 21, 1904 (33 Stat., 189, at 193).
Act of March 3, 1905 (33 Stat., 1048, at 1051).
Act of June 21, 1906 (34 Stat., 325, at 350).
Act of March 1, 1907 (34 Stat., 1015, at 1033).
Act of April 30, 1908 (35 Stat., 70, at 83).
Act of March 3, 1909 (35 Stat., 781, at 794).
Act of April 4, 1910 (36 Stat., 269, at 276).

In 1910 the United States was reimbursed in full for all moneys carried in the preceding appropriations bills (appellants' brf., pp. 21-2).

The Indian Appropriation Bill approved March 3, 1911 (36 Stat., 1058, at 1065), contained the following provision:

> "That the Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of $165,000, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians of the State of Minnesota, arising under section 7 of the act of January 14, 1889, entitled 'An act for the relief and civilization of the Chippewa Indians in the State of Minnesota,' and to use the same for the purpose of promoting civilization and self-support among the said Indians *in manner and for purposes provided for in said act.*"

Like items in identically or substantially the same language, differing only in amounts, and each limiting the expenditures to the purposes provided for in the act of 1889, were contained in the following Indian Appropriation Bills:

Act of August 24, 1912 (37 Stat., 518, at 525).
Act of June 30, 1913 (38 Stat., 77, at 88).
Act of August 1, 1914 (38 Stat., 582, at 590-1).

The provisions contained in the four last enumerated acts were enacted under the authority contained in the proviso to section 7 of the act of 1889, by which Congress was authorized "in its discretion, from time to time," to appropriate not to exceed five per centum of the principal trust fund "for the purpose of promoting civilization and self-support among the said Indians," and which latter the Indians were informed by the commissioners and believed, and so believing consented to the cessions and allotments, meant that this authority would only be exercised by Congress in the event of "unforeseen misfortune," such as "the failure of crops." Thus before the principal fund could be en-

croached upon by Congress under the proviso to section 7, *supra*, Congress must first determine that such an appropriation was necessary by reason of the failure of crops or some unforeseen misfortune which had overtaken the Indians, and the money when appropriated could only lawfully be used for this special purpose.

3. No Authority Contained in the Joint Resolution for the Expenditure of a Single Dollar of the Principal Trust Fund.

We now come to the one question in the case, viz: Was the provision contained in the act of August 1, 1914, *supra*, authorizing the Secretary of the Interior, at his discretion, to withdraw from the Treasury of the United States $205,000 of the principal fund on deposit to the credit of the Chippewa Indians of the State of Minnesota, arising under section 7 of the act of January 14, 1889, and to use $160,000 thereof, or so much as might be necessary, during the fiscal year ending June 30, 1915, for the purpose of promoting civilization and self-support among said Indians in manner and for purposes provided for in said act of 1889, re-enacted by the joint resolution approved March 4, 1915, and made available during the fiscal year ending June 30, 1916?

The joint resolution approved March 4, 1915 (R., 4-5), provided that all appropriations—

> "for the *current and contingent expenses of the Bureau of Indian Affairs* and for *fulfilling treaty stipulations* with various Indian tribes which shall remain unprovided for on June 30, 1915, are continued and made available for and during the fiscal year 1916 to the same extent, in detail, and under the same conditions, restrictions, and limitations for the fiscal year 1916 as the same were provided for on account

> of the fiscal year 1915 in the Indian Appropriation Act for that fiscal year."

As stated by the Court of Appeals (R., 16):

> "The question is presented, therefore, whether this joint resolution makes available for the fiscal year 1916 an additional sum of $160,000 for the purpose of promoting civilization and self-support among these Indians. In approaching a consideration of this question, we must bear in mind that this fund is a part of a trust fund in the control of the United States to the credit of these Indians (Minnesota vs. Hitchcock, 185 U. S., 373, 394) and that the expenditure thereof must be in accordance with the provisions of the trust (United States vs. Mille Lac Chippewas, 229 U. S., 458)."

By the act of August 1, 1914, no specific appropriation was made, the Secretary being merely authorized to withdraw, at his discretion, the sum of $205,000, or so much thereof as might be necessary, of the principal fund arising under section 7 of the act of January 14, 1889, "and to use the same for the purpose of promoting civilization and self-support among the said Indians in manner and for the purposes provided for in said act." Whether any portion of the $205,000 was to be withdrawn, or, if so, how much, was left solely to the discretion of the Secretary. The expenditure of whatever amount was withdrawn was expressly limited to the special purpose of "promoting civilization and self-support" among said Indians in accordance with the explanation of those words given the Indians by the commissioners. The expenditure of any part of the $205,000 had no relation to the "current and contingent expenses of the Bureau of Indian Affairs," even though the expenditure was made through that bureau. As held by the Court of Appeals (R., 17):

"It was not a current expense, for that term has a well-understood meaning. By it is meant regular and ordinary expenses and not expenses of a special, unusual, or extraordinary character. Taylor vs. Davis, 110 U. S., 330, 338; Sheldon vs. Purdy, 17 Wash., 135. Nor was it a contingent expense. In addition to the usual expenditures authorized in appropriation acts, it is customary for Congress to make a limited appropriation for 'contingent expenses,' such as are incidental to any great business, which can not well be foreseen and therefore can not be specifically named. Dunwoody vs. United States, 22 Ct. of Claims, 269, 280. The $160,000 item in the appropriation for the fiscal year 1915 was a special appropriation to be expended according to the terms of the trust. Clearly, therefore, it was neither a current nor contingent expense of the Bureau of Indian Affairs."

Nor was the expenditure of any part of the $205,000 "for fulfilling treaty stipulations" with the Chippewa Indians of Minnesota. By the act of March 3, 1871 (16 Stat., 566, sec. 2079, U. S. R. S.), further treaties with the Indians were prohibited. But notwithstanding this prohibition counsel for appellants (Brf., 29-30) contends that the authorization contained in the act of August 1, 1914, was considered by Congress as in fulfillment of a treaty stipulation, because in the Indian Appropriation Bills from 1906 to 1909, inclusive, the word "Treaty" appears immediately preceding the authorizations. No such word precedes the authorization contained in the act of August 1, 1914 (38 Stat., at 590-1). In each and every Indian Appropriation Bill in which Congress has authorized the expenditure of a single dollar of the principal fund it is expressly declared that the fund arose "under section 7 of the act of January 14, 1889, entitled 'An act for the relief and civilization of the Chippewa Indians in the State of Minnesota.'"

In concluding its opinion (R., 17) the Court of Appeals disposed of the contention of counsel for appellants in these words:

> "Forming no part of the current or contingent expenses of that bureau, and clearly not within any treaty stipulation, it necessarily follows that it was not within the joint resolution under consideration. The words of the resolution not being doubtful or ambiguous, we are not at liberty to consider the title thereof, since it is only where ambiguity exists in the context that the title is of any importance. Cornell vs. Coyne, 192 U. S., 418.
>
> "We conclude, therefore, that the Interior Department was without legal authority to encroach upon this trust fund, and hence that the beneficiaries of the trust are entitled to the relief prayed. The decree is reversed and the cause remanded for further proceedings not inconsistent with this opinion."

(a) *All Members of the Tribe Have Assured Incomes Sufficient for Their Support and Civilization.*

Counsel for appellants (brief, 31-2) lays stress upon the fact that three-fourths of the interest arising on the principal fund under section 7 of the act of 1889 amounted in 1915 to $229,315.60 and that when this sum was divided per capita each member received only $18.50, which it is contended was utterly inadequate for the support and civilization of the members. Counsel ignores the incomes derived from the allotments of 160 acres of land made to each member of the tribe under the acts of 1889, *supra*, and April 28, 1904 (33 Stat., 539), except to about one thousand Indians residing on the Red Lake Reservation who are receiving from the sale of timber lands under the act of February 20, 1904 (33 Stat., 48), annual per capita

payments in excess of $200. Counsel also ignores these facts: That title in fee simple passed and is passing under the act of March 1, 1907 (34 Stat., at 1034), to all adult mixed-blood allottees, as well as those who become of age; that under the general laws of Congress the timber on the restricted allotments has been and is being sold; that in many instances the allotments to the minors and full-bloods have been sold by order of the Secretary of the Interior and the funds derived therefrom held and used for the support and education of the individual Indian; that the Indians are no longer occupying an isolated position, but are accorded all of the educational advantages accorded any other citizens of Minnesota, the free public school system of the State having been extended to every part of the reservation; that practically all the members of the tribe derive sufficient income from their own industry and labor to meet all their requirements; that as found by this Court in Johnson v. Gearlds (234 U. S., at 443):

> "In consequence of their elevation to the plane of citizenship by the operation of the allotment acts, tribal relations have, for most purposes, ceased to exist, but are recognized for the purpose of the distribution of annuities under the Nelson act";

and that it is the Indians, themselves, in their own behalf and in their own right who are protesting against the improper use of their funds by the Government officers in defraying the expenses of the Indian Bureau. If these funds can be used to pay the salaries and expenses of the regular Indian force maintained on the reservations engaged in the enforcement of the general laws of Congress, and which force forms an integral part of the Indian Bureau, on the theory that the maintenance of such a force is in aid of their civilization and self-support, then the funds

could likewise be used to defray the expense of the Interior Department, which has to do with the Indians, and likewise used to pay the salary of the President of the United States and the expenses of the general Government on the theory that the maintenance of the general Government is in aid of their support and civilization. To take from the principal trust fund $160,000 to $205,000 per annum will exhaust the fund before the expiration of the fifty-year trust period and will leave nothing to distribute. The interest payments will grow less annually and the entire trust fund will be consumed by the Bureau of Indian Affairs in defraying the regular expenses of that bureau. This is so flagrantly in violation of the terms and conditions of the trust that argument is superfluous.

4. RECAPITULATION.

(*a*) The fund in question is a trust fund in the control of of the United States to the credit of the Indians, and the expenditure thereof must be in accordance with the provisions of the trust.

(*b*) The trust expressly limited the expenditure of any part of the principal fund to unforeseen contingencies that might arise.

(*c*) Before any part of the principal fund could be used for the special purposes indicated express authorization of Congress was necessary, and no such authorization is found in the joint resolution approved March 4, 1915.

(*d*) Express appropriations out of the public funds were made in the Indian Appropriation Bills from 1890 to 1899, inclusive, to defray all the general administrative expenses on the Chippewa Reservations in Minnesota; from 1899 to 1909, inclusive, express appropriations were made in the Indian Appropriation Bills for the pay of the salaries of the

agents, and lump-sum appropriations were carried in all the Indian Appropriation bills from 1900 to 1914, inclusive, to defray all the expenses of administration under the general laws of Congress on said reservations.

(*e*) No authorization is contained in any appropriation bill from 1890 to 1914, inclusive, that authorized the expenditure of a dollar of the principal trust fund to defray the expenses of "all the Chippewa agencies, with their various activities that have heretofore and are now being conducted" on the Chippewa Reservations in Minnesota, and the use of the trust fund for such purpose has been without authority of law.

Conclusion.

For the above reasons it is respectfully submitted that the decree of the Court of Appeals should be affirmed.

Respectfully submitted,

WEBSTER BALLINGER,
Attorney for Appellees.